

(2017) 10 BOM CK 0102
In the Bombay High Court
Case No : 2827 of 2014

Mehtab Laiq Ahmed Shaikh

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-10-2017

Acts Referred:

Land Acquisition Act, 1894, Section 4, Section 6, Section 23, Section 11, Section 9, Section 5A, Sect

Citation : (2017) 10 BOM CK 0102

Hon'ble Judges : Dr. Manjula Chellur, N.M. Jamdar, G.S. Kulkarni

Bench : FULL BENCH

Advocate : Siddharth Ronghe, A.A. Kumbhakoni, Geeta Shastri, S.T. Satelkar, ? Shardul Singh, Akshay Shinde, A.B. Vagyani, P.G. Sawant, Vikas Mali, G.R. Golatkar, R.S. Sawant

Judgement

1. The full bench is called upon to answer the following question: - "Whether the provisions of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 as regard lapsing of the acquisition apply to the acquisition proceedings initiated in terms of Section 125 to 127 of the Maharashtra Regional Town Planning Act, 1966?"

2. To answer this question, we will have to consider the historical perspective of the land acquisition and the town planning laws. The acquisition of private lands in India is statutorily regulated for almost 150 years. The law has gone through changes from time to time. The long standing land acquisition enactment was replaced by a new law a few years ago. In the erstwhile Bombay region, and now Maharashtra, the laws dealing with town planning are in operation since almost a century. The interplay between the state law governing town planning and the central law dealing with land acquisition has fallen for consideration of the Supreme Court on more than one occasion. A brief outline of the growth and the features of the acquisition laws, the state town planning laws and the decisions

of the Apex Court on the issue, is necessary as a prefix to the discussion.

3. The chronological placement of the topics is as follows. First, we will refer to the acquisition laws leading to Land Acquisition Act, 1894. Then the state town planning laws, including the Maharashtra Regional and Town Planning Act, 1966, amendments to Land Acquisition Act, decisions of the Supreme Court on the applicability of amendments to Land Acquisition Act to the town planning laws, the new acquisition law, that is the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the RFCTLARR Act), the decision of the division bench of this Court on the applicability of the new acquisition law, amendments to the Maharashtra Regional and Town Planning Act, the rules framed by the State Government under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, and the events leading to the present Reference. After noting the rival contentions, we will address the pivotal issue as to whether the law laid down by the Supreme Court in respect of the earlier land acquisition law applies to the new acquisition law in the context of the question posed and whether there is any change in the legal position.

4. The British Government enacted the first land acquisition legislation in India in the year 1824. It was called the Bengal Resolution I of 1824. In the year 1850, the regulation was extended to Calcutta. Subsequently, similar Acts were enacted for Bombay and Madras. Repealing previous enactments the Act of 1857 was brought into force in rest of British India. The subsequent Act X of 1870 was replaced by the Land Acquisition Act of 1894. After the Independence, the Land Acquisition Act, 1894 was adopted by the Indian independence (Adoption of Central Act and Ordinances (order) of 1848. The Land Acquisition Act of 1894 (the L.A. Act) was employed for the purpose of acquisition of private land by the Government for the public purpose.

5. Section 3 of the L.A. Act defined the terms occurring in the Act. Various categories were enumerated under the definition of the "Public Purpose", Part II of the L.A. Act dealt with the acquisition of land. Whenever it appeared to the appropriate Government that land in any locality was needed or likely to be needed for any public purpose, a notification to that effect was to be published. Section 4 stipulated publication of such preliminary notification. Section 4(1) of the L.A. Act dealt with the manner in which the notification was to be issued. Section 4(2) made it lawful for the authorized officers to enter upon the land pursuant to the notification, make a survey and take ancillary steps. Initially, the L.A. Act did not provide any opportunity for the objectors to put forth their objections against the compulsory acquisition. By an amending Act, Section 5A was inserted in L.A. Act. Under this provision, a person interested in the land which was needed or likely to be needed for the public purpose could file the objections. Section 5A (2) mandated the Collector to give an opportunity to the objector of being heard and then submit a report containing his recommendations on the objections. Section 6 governed the declaration of the

intended acquisition. Section 6 states that, after considering the report under Section 5A(2), if any land is needed for public purpose, the declaration to that effect is to be published in the Official Gazette. After the land was marked out and measured, the Collector issued a notice under Section 9 to the interested persons. On the date so fixed, the Collector proceeded to inquire into objections if any, pursuant to the notice given under Section 9 and declared an award under Section 11. After the award was made under Section 16, the Collector was empowered to take possession of the land. After the possession was taken, the lands vested absolutely in the Government, free from all encumbrances. Section 17 conferred special powers on the appropriate Government in case of urgency to take immediate possession by dispensing with the certain procedure specified in the said Section. Section 23 dealt with matters to be considered for determining the compensation and the matters which were to be excluded while determining the compensation were enumerated under Section 24. Section 48 provided that the Government was at liberty to withdraw from acquisition of land of which possession has not been taken. This broadly is the background and outline of the Land Acquisition Act, 1894.

6. The origin of town planning legislation in the Bombay State can be traced back hundred years. The Bombay Town Planning Act, 1915 was enacted to ensure that the town planning is made efficient. The Act of 1915 emphasised on the individual rights, as extent of population in the urban areas did not pose a serious problem then. Later as the urban population grew exponentially, the Act of 1915 was repealed and was replaced by Bombay Town Planning Act, 1954. Various provisions were made acknowledging the importance of the town planning in development of urban areas, not only for better infrastructure, but also for the well-being of the residents. Stipulations were incorporated to frame the schemes for orderly development and for implementation. Considering the ills brought about by the rapid urbanization, the larger interest of the society in planned development was given importance and the individual rights were made subservient, to a degree. The Maharashtra Regional and Town Planning Act, 1966 was brought to statute book with effect from 11 January 1967. The MRTTP Act made provisions for planning, development, and use of lands. It also dealt with regional planning, ways to make better provisions for preparation of development plan and to ensure that the town planning schemes are made properly. The powers of the Town Planning Authority to take steps to ensure orderly development of urban area were increased and provisions were made for acquisition of lands pursuant to the public purpose. The Act also provided for creation of new towns.

7. Section 2 of the MRTTP Act defines various terms. "Development" is defined, inter-alia, as buildings, engineering, mining and other operations, making changes in the building or land; re-development layout sub-division of any land. "Planning authority" is defined as the local authority, which includes Special Planning Authority and Slum Rehabilitation Authority. The concept of "Regional plan" and "Development plan" have also been defined. Chapter II of the Act

deals with the Regional Plan. The Act establishes Regions and alteration of its limits, as specified by the State Government by notification in the official gazette. Part (C) of Chapter II of the Act provides for the survey and preparation of the Regional Plans, contents of the Regional Plan, the methodology and submission of Regional Plan for approval, publication of the Regional Plan, restrictions on change of user, and the modifications. The Regional Plan indicates the manner in which the land in the Region should be used.

8. Chapter III of the MRTTP Act deals with the Development Plan. The contents of the Development Plan have been indicated in Section 22. The Development Plan is to be prepared by every planning authority. The Act deals in detail with the contents of Development Plan, the Draft Development Plan, Interim Plan and its finalization. Steps for modification of the Plan are also provided. Area Development Authorities are constituted under Chapter III-A. Control and restrictions on the development of land are provided for. Permission for development and its refusal and remedies against the refusal and the penalties, as well as powers of the authorities in respect of unauthorized development, are also prescribed. Town Planning Scheme is dealt with under Chapter V. Part A of Chapter V lays down the preparation of town planning scheme, the contents of draft scheme and the power to sanction the draft scheme. Part B provides for an arbitrator and a tribunal for appeal to resolve the dispute in respect of the town planning scheme. Power of the authorities to enforce the Scheme are dealt with under Part C of Chapter V.

9. Chapter VII of the MRTTP Act, which is of importance, deals with the land acquisition. Section 125 states that any land required or reserved in a regional development plan or a town planning scheme for a public purpose shall be deemed to be for a land for the public purpose under the L.A. Act (now RFCTLARR Act). Section 126 deals with the acquisition of lands for the public purpose specified in the plan. It provides for three modes of acquisition in respect of the land reserved for public purpose in the plans or schemes. The first mode is by agreement, paying the amount agreed. Secondly, in lieu of the amount, by grant of floor space index or transferable development rights, on certain conditions. Thirdly, by making an application for acquisition of lands under the L.A. Act (now RFCTLARR Act). Section 126(2) states that on receipt of an application, the State Government, if it is satisfied, can make a declaration to that effect in the manner provided under Section 6 of L.A. Act (now Section 19 of RFCTLARR Act). Sub-section 3 of Section 126 empowers the Collector to take order for the acquisition, after publication of such declaration on certain conditions stated therein. Section 127 deals with lapsing of reservation. It provides that in case of any land reserved under the Act is not acquired within ten years from date on which the final plan comes into force, the person interested can make an application to the concerned authorities. If the authorities do not take any steps within 24 months to acquire the land, then the reservation, allotment, designation as the case may be, shall deem to lapse. Section 128 deals with powers of the State Government to acquire land other

than one which is designated in any Plan or Scheme. The Act also deals with the subjects such as finance, audit and various ancillary provisions. This broadly is the scheme of the MRTTP Act.

10. By passage of time various issues arose from the implementation of the L.A. Act and amendments were carried to overcome these shortfalls. The L.A. Act was amended on 24 September 1984 by the Land Acquisition (Amendment) Act of 1984, whereby Section 11A was inserted. Section 11A mandated that an award shall be made by the Collector under Section 11 of the Act within a period of two years from the date of the publication of the declaration under Section 6. Breach of this condition resulted in lapsing of the entire acquisition proceedings. The Explanation appended to Section 11A excluded the period during which any action or proceeding relating to acquisition taken pursuant to such declaration remained stayed by an order of the Court.

11. After Section 11A was introduced in the statute book, a question arose whether this provision could be applied to acquisitions under Chapter VII of the MRTTP Act. This issue was taken to the Apex Court, amongst others by one Girnar Traders, a registered firm from Maharashtra. Girnar Traders owned certain lands within the jurisdiction of Jalgaon Municipal Council. The firm questioned the inaction of the Municipal Council in respect of the purchase notice issued by it. Since the Municipal Council did not accept the claim of Girnar Traders, a writ petition came to be filed in the Bombay High Court. The writ petition was dismissed, and Girnar Traders filed an appeal in the Supreme Court. The appeal came for consideration before the bench consisting of two learned Judges. It was contended by the appellant that the award was not published within two years and the amended provisions of the L.A. Act would have to be read into MRTTP Act and consequently, the resultant benefits need to be extended to the appellant. The Respondents relied upon the decision of the bench of two learned Judges of the Apex Court in the case of State of Maharashtra v/s. Sant Joginder Singh Kishan Singh, 1995 Supp (2) 475 . The Bench which heard the appeal of Girnar Traders expressed an opinion that the decision in Sant Joginder Singh requires reconsideration by a larger bench. The bench opined that there was no reason as to why the provisions introduced in L.A. Act by the Central Act 68 of 1984 are not read into Chapter VII of MRTTP Act. It expressed that Section 11A of the L.A. Act, being one such provision, it may have to be applied to acquisition under Chapter VII of the MRTTP Act.

12. The appeal of Girnar Traders, along with other matters, were thus placed for hearing before the bench of three learned Judges. Contentions were advanced to apply Section 11A in Chapter VII of the MRTTP Act. The bench of three learned Judges decided to refer the question to a larger bench. This decision is reported as Girnar Traders (2) v/s. State of Maharashtra, (2007) 7 SCC 555 .

13. Five learned Judges of the Apex Court sat as a Constitution Bench to consider the question regarding the applicability of Section 11A of the L.A. Act to the acquisition under Chapter VII of the MRTTP Act. The Constitution Bench was called

upon to examine whether the MRTP Act is a self-contained code and whether the provisions of the Land Acquisition Act, as amended by Central Act 68 of 1984, with emphasis on Section 11A, can be read into the provisions of the MRTP Act. The appellants contended that the provisions of L.A. Act are a legislation by Reference into provisions of MRTP Act, therefore, the amendments, including Section 11A, brought about by the Central Act of 68 of 1984, becomes an integral part of the MRTP Act. It was contended that both the enactments operate in a common field and form a unified working scheme. It was urged that since Section 125 of MRTP Act stated that a purpose of acquisition under the MRTP Act would deem to be a public purpose within the meaning of L.A. Act, once notification under Section 126(2) is issued, automatically the provisions of Section 6 and complete mechanism for acquisition of land comes into effect and consequently Section 11A applies as well. It was contended that if Section 11A is not made applicable, it will amount to discrimination. These submissions were countered by the Respondents contending that the MRTP Act is a self-contained code and there is no question of legislation by Reference or by Incorporation, and even otherwise it was a clear case of legislation by Incorporation. It was contended that provisions of MRTP Act refer to specific provisions of L.A. Act and there is no general application and both the legislations are enacted by two different bodies for different purposes and operate in different fields.

14. For resolution of the controversy, the Constitution Bench examined the scheme of MRTP Act and the L.A. Act. After taking survey of both these enactments, the Bench categorically opined that the MRTP Act is a code in itself having one predominant object i.e. the planned development. It observed that MRTP Act does not lose its character being self-contained code merely because it makes a reference to some of the provisions of the L.A. Act for the purpose of acquisition. The Bench held that if the entire planned development, which is a massive project, is permitted to lapse on the application of Section 11A of the L.A. Act, then it will frustrate almost every project of planned development. Applying the doctrine of pith and substance, the Bench observed that the MRTP Act is aimed at planned development unlike the L.A. Act whose object is to acquire lands and disburse compensation in accordance with law. There is no repugnance between the two enactments. The Constitution Bench accordingly answered the reference by holding that MRTP Act is a self-contained code and provisions introduced by L.A. Act by Central Act of 68 of 1984 in respect of acquisition of payment of compensation and legal remedies can be read into acquisition under Chapter VII of MRTP Act, but those provisions of L.A. Act which provide different time frame, consequences of default resulting in lapsing of acquisition cannot be read into MRTP Act. Section 11A of L.A. Act was one such provision. Accordingly, the Constitution Bench answered the reference on 11 January 2011 in the decision reported as *Girnar Traders (3) v/s. State of Maharashtra and Ors.*, 2011(3) SCC 1 .

15. When the case of *Girnar (3)* was being considered, by the Constitution Bench, along with cases arising from other Acts, on a submission made by the

learned Counsel that the provisions of the Bangalore Development Authority Act are different than the MRTTP Act and the cases relating to B.D.A. Act should be heard separately, the Constitution Bench considered the issue separately. In this case, the Constitution Bench dealt with the question of applicability of Section 11A of the L.A. Act to the B.D.A. Act. An argument was advanced that Section 11A of the L.A. Act needs to be read into the provisions of the B.D.A. Act as it is the case of legislation by Reference. It was also contended that provisions of Section 11A can operate as a part of scheme of B.D.A. Act and such integration would be in consonance with the larger public policy. After examining the scheme of the B.D.A. Act, the Constitution Bench held that the B.D.A. Act is a self-contained code with the distinct and predominant purpose of planned development. The Bench referred to its decision in respect of the MRTTP Act and reached an identical conclusion. The Apex Court held that the provisions of L.A. Act, such as Section 11A, which provide for different time frame and consequences of default resulting in lapsing of acquisition proceedings, cannot applied to the B.D.A. Act. The decision is reported as *Offshore Holdings Private Limited v/s. Bangalore Development Authority and Ors.*, 2011(3) SCC 139

16. Over the years, a demand had steadily grown for a new acquisition law. The L.A. Act enacted by the British almost 120 years ago focused primarily on forcible acquisitions for building infrastructure, such as railways, roads, bridges, canals. Wide spread public opinion was generated that the Act did not adequately address various social issues that arose from the compulsory acquisitions, especially from the acquisitions for mega-projects. The indiscriminate use of Section 17 of the L.A. Act by the executive, invoking urgency clause dispensing with statutory safeguards, was one such complained abuse. It was felt that the compensation paid under the L.A. Act was unrealistic and unconnected with the actual rates. Ultimately, the Apex Court also took note of this malady and in the case of *Ramji Veerji Patel and Ors. v/s. Revenue Divisional Officer & Ors.*, 2011 (10) SCC 643 observed the L.A. Act had failed to redress all the concerns and expressed an expectation that the law-makers should come out with a comprehensive land acquisition enactment. These deliberations led to initiation of the legislature process to bring about a new law governing acquisition in the country.

17. On 1 January 2014, the new law for acquisition i.e. the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, was brought into force. Section 2 of the RFCTLARR Act provides for application of the Act to various land acquisitions. It classifies acquisition of lands in three categories. The Act applies when the appropriate Government acquires the land for its own use, including Public Sector Undertakings, and for public purpose. Public purpose includes Defence, Infrastructure Projects, rehabilitation of project affected families, Housing Projects, Projects for planned development and improvement of villages, projects for the poor and landless persons. The provisions of the Act also apply when the land is acquired for private partnership for public use and certain other

categories in respect of private companies. Section 3 of the Act defines the terms occurring in the Enactment, such as "affected family", "company", "displaced family", "infrastructure projects", "person interested", "public purpose", etc.

18. Chapter II of the RFCTLARR Act deals with the determination of social impact, and public purpose. In part A of Chapter II, preliminary investigation for determination of social impact and public purpose is contemplated. Appraisal of Social Impact Assessment report by an expert group is provided under Part B. Chapter III deals with special provisions to safeguard food security. Chapter IV deals with aspect of preliminary survey of land, payment for damages. Section 14 provides that if preliminary notification under Section 11 is not issued within twelve months from the date of appraisal of Social Impact Assessment report, then the report shall lapse. Under Section 15, a provision is made for hearing the objections. Section 19 deals with publication of declaration and for rehabilitation and resettlement. Section 24 deals with acquisitions initiated under L.A. Act. Section 24(2) deals with lapsing of land acquisition process initiated under the L.A. Act. Factors for determination of amount of compensation are provided under this Chapter.

19. The RFCTLARR Act provides for procedure and manner of rehabilitation and resettlement. It establishes a National Monitoring Committee for rehabilitation. It also establishes a Land Acquisition Rehabilitation and Resettlement Authority. Apportionment of compensation is provided under Chapter IX. The manner of payment of compensation is enumerated in Chapter X. Section 107 of the Act clarifies that nothing in the RFCTLARR Act would prevent any State from enacting any law to enhance or add to the entitlement and to confer higher compensation than payable under this Act. The power of Appropriate Government to make rules has been indicated in Section 109 and the topics on which rules may framed are enumerated in Section 109(2). The RFCTLARR Act, amongst others, addresses social issues that arise from large scale infrastructural projects and provides for fair compensation, rehabilitation and resettlement which result from Mega-Projects.

20. Section 24(2) of the RFCTLARR Act provides that in case of land acquisition proceedings initiated under the Land Acquisition Act, where an award under Section 11 is made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken, or the compensation has not been paid, the said proceedings shall be deemed to have lapsed. Therefore, the landholders whose lands were reserved and acquired under the MRTP Act sought to raise an issue to whether section 24(2) of RFCTLARR Act would apply to the acquisitions under chapter VII of the MRTP Act.

21. One such landowner, whose land was acquired pursuant to the provisions of the MRTP Act by an award dated 29 January 2008 approached the Nagpur Bench of this Court. He contended that he was in possession of the land, the award was five years before the stipulated date, and therefore he was entitled to a declaration that the land acquisition proceedings have lapsed in view of the

provisions of Section 24(2) of the RFCTLARR Act. The State Government opposed the relief. The State contended that Section 24(2) does not apply to the land acquisition proceedings initiated under the MRTP Act. The State relied upon the decision of the Constitution Bench in the case of *Girnar Traders (3)* to contend that the MRTP Act is a code in itself. The Division Bench (V.A.Naik and A.M.Badar, JJ), after considering the rival contentions and examining the statutory provisions, held that the provisions of Section 24(2) of the RFCTLARR Act as regard lapsing of acquisition do not apply to the acquisition initiated under the provisions of MRTP Act. The Division Bench dismissed the petitions by the decision dated 6 May 2015 reported as *Hanumanrao Morbaji Gudadhe & Ors. v/s. State of Maharashtra & Ors.* 2015(6) Mah. Law Journal 127.

22. In the meanwhile, exercising the powers under the RFCTLARR Act, the State of Maharashtra framed rules titled the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Maharashtra) Rules of 2013. These Rules deal with the social impact assessment, procedure for hearing, the requirement of consent, notification, rehabilitation and a resettlement scheme. As regards the MRTP Act, the Rule 19 states that if an award has not been declared before 31 December 2013, the proceedings shall continue as per the formula provided under Section 26 to 30 of the RFCTLARR Act.

23. The Maharashtra Act of 42 of 2015 amended the MRTP Act with effect from 29 August 2015 where the reference to the L.A. Act was replaced with the RFCTLARR Act. By the same amending Act a proviso to Section 125 was added, stating that the procedure specified in Section 4 to 15 of the RFCTLARR Act shall not be applicable to such lands.

24. Several writ petitions seeking application of Section 24(2) of the RFCTLARR Act were pending at the Principal Seat and Aurangabad Bench of the Court. One such petition, which is the lead petition in this group is the Writ Petition No. 2827 of 2014. In this case the land in question was reserved for recreation ground in the Draft Development Plan for Greater Mumbai. It continued to be reserved for a recreation ground. On 12 November 1992, the final development plan was sanctioned, and the reservation for a recreational ground was confirmed. The Petitioners claimed that a purchase notice under the MRTP Act was given and proceeded on the assumption that the reservation had lapsed and submitted plans for the development of the land. On 29 January 2002, the Additional Collector issued a notification under Section 126 of the MRTP Act read with Section 6 of the L.A. Act for acquisition. A writ petition was filed, which was disposed of directing the authorities to make an award within twelve months. One more petition was filed, and during the pendency of the second writ petition, an award was declared on 29 November 2008. The pending writ petition was amended to challenge the award, as well as the reference under Section 18 of L.A. Act was made. The Court did not grant any interim relief in favour of the Petitioner. Thereafter, from January 2010 till December 2013 correspondence

ensued between the parties. After the RFCTLARR Act came into force on 1 January 2014, a letter was addressed by the Petitioners to the authorities claiming lapsing of acquisition. The Petitioners contended that acquisition proceedings taken pursuant to the reservation for recreational ground have lapsed under Section 24(2) of the RFCTLARR Act, since possession is not yet taken and compensation is not paid. The State Government and the Municipal Corporation inter-alia contended that this provision is not applicable. In the other connected writ petitions, the question of law raised is identical.

25. These Petitions came up before the Division Bench (Dr.Manjula Chellur CJ and G.S.Kulkarni J). The Petitioners argued that the decision of the Division Bench in Hanumanrao Morbaji Gudadhe does not lay down the correct law. It was contended that there is a change in legal position, as a proviso to Section 125 MRTP Act has been enacted, amendments have been carried out in MRTP Act and Rules are framed by the State government under the RFCTLARR Act. The Bench opined that the issue was of vital public importance and by order dated 19 January 2017 sought a reference to the larger bench to decide as to whether Section 24(2) of RFCTLARR Act applies to the acquisition proceedings under the MRTP Act. Thereupon the Hon"ble Chief Justice constituted this Full Bench to determine the question.

26. We have heard the learned Counsel for parties in extention. We requested Mr. Janak Dwarkadas and Mr. Aspi Chinoy, learned Senior Advocates to assist us as amicus curie. The members of the bar were permitted to address on the legal issue.

27. In support of the preposition that Section 24 of the RFCTLARR Act will apply to acquisition under Chapter VII of the MRTP Act, arguments were led by Mr. G.S. Godbole, learned Advocate with inputs from Mr. Ronghe, learned Advocate. Mr. A.V. Anturkar, learned Senior Advocate, as an intervenor supported this proposition. On behalf of the respondents, Mr. A.A. Kumbhakoni, learned Advocate General, Mr. A.Y. Sakhare, learned Senior Advocate, Mr. Vijay Patil, learned Advocate advanced submissions in support of the contra-proposition that Section 24 cannot be made applicable. Mr. Janak Dwarkadas, learned Amicus Curiae was of the opinion that Section 24(2) cannot be made applicable to Chapter VII of MRTP Act as law in Girnar (3) is binding and advanced submissions accordingly. Mr. Aspi Chinoy, learned Amicus Curie expressed that amendment 42 of 2015, by which proviso to Section 125 of MRTP Act has been enacted, may perhaps assist the Petitioners to contend that Section 24(2) of the RFCTLARR Act can be made applicable.

28. In support of the proposition that Section 24(2) of RFCTLARR Act is applicable to acquisitions of Chapter VII under MRTP Act, in short, the following contentions were advanced. (i) By Maharashtra Act XLII of 2015, the MRTP Act has been amended to substitute the LA Act with RFCTLARR Act on account of repeal of L.A. Act of 1894 it's substitution with RFCTLARR Act and a proviso has been incorporated in Section 125. The State legislature has only made provisions

4 to 15 of the RFCTLARR Act inapplicable and not the other provisions and what needs to be seen is whether contra-intention as contemplated under Section 8 of General Clauses Act, is evident. In view of this position the decision in the case of Girnar(3) is no longer applicable.

(ii) Since the proviso to Section 125 states that only the provisions of Section 4 to 15 of L.A. Act are not made applicable, it is implied that the legislature has made the other provisions of RFCTLARR Act applicable to MRTTP Act.

(iii) L.A. Act of 1894 was a legislation by incorporation and there was not incorporation by reference. The Apex Court applied a doctrine of pith and substance. Based on this position, the Apex Court in Girnar (3) held that Section 11A would not get incorporated. There was no question of contrary intention as contemplated under Section 8 of General Clauses Act then. This position has now undergone a change.

(iv) In the case of Karnail Kaur v/s. State of Punjab, 2015(1) Scale 598 the Apex Court has held that even if the land is reserved under the Punjab Regional Town Planning Act, in case of a acquisition, Section 24(2) of the RFCTLARR Act is applicable. The provisions of the MRTTP Act and the Punjab Regional Town Planning Act, 1995 are identical.

(v) Application of Section 24(2) of RFCTLARR Act will not defeat or frustrate the object of MRTTP Act as lapsing of a acquisition is different than lapsing of a reservation. If Section 24(2) is made applicable then only consequences would be acquisition would lapse, and the appropriate government will have to initiate fresh proceedings for acquisition, however, the reservation for public purpose would continue.

(vi) Section 24(2) of the RFCTLARR Act deals with lapsing of an award as contra-distinguishing from lapsing of the acquisition under Section 11A and therefore decision of Girnar (3) cannot be made applicable. Therefore, only consequences that would arise is payment of higher compensation to the person whose land has been compulsory acquired. Even if the appropriate government does not choose to reacquire the land, the reservation will continue to exist and the object of MRTTP Act will not be frustrated.

(vii) Various anomalous situations will arise if Section 24(2) is not made applicable.

(viii) In the decision of Girnar (3), the effect of the deeming provision in Section 126(2) of MRTTP Act relating to the declaration be duly made under Section 6 of the L.A. Act was not advanced.

This provision will make it clear that the acquisition under Section 126(2) of the MRTTP Act is in fact under the L.A. Act. The acquisition proceedings under the L.A. Act and cannot be stated to be initiated under the MRTTP Act.

(ix) In view of the introduction of the proviso to Section 125 of MRTTP Act, the

basis of Girnar (3) is taken away, which any case is an authority for applicability of Section 11A and nothing more.

(x) Section 11A of the L.A. Act deals with the situation before the Award and Section 24(2) RFCTLARR Act deal with situation post-award and these two concepts are fundamentally different.

(xi) The decision of Girnar (3) therefore cannot be made applicable, and Section 24(2) will have to be applied to acquisitions under Chapter VII of MRTP Act.

29. In support of the proposition that Section 24(2) of the RFCTLARR Act cannot be made applicable to acquisition under Chapter VII of the MRTP Act, it was, in short, contended as under :-

(i) The decision of Girnar (3) of the Constitution Bench is clear and will have to be made applicable and is binding. No provision which applies different time frames and lapsing of acquisition by default can be made applicable to MRTP Act. The decision Girnar (3) cannot be restricted to Section 11A of L.A. Act alone.

(ii) The MRTP Act is a code in itself, and there is no change in the MRTP Act. Thus, there is no change in the law declared by the Apex Court in Girnar (3).

(iii) Section 24(2) of RFCTLARR Act speaks of "initiation under the Land Acquisition Act" therefore when the acquisition is initiated under Chapter VII of the MRTP Act, Section 24 cannot be made applicable.

(iv) The amendment of 2015 to MRTP Act introducing a proviso to Section 125 does not affect the decision of Girnar (3). The proviso is only to Section 125. Even otherwise given the scheme of MRTP Act, Section 4 to 15 stand excluded and the proviso only clarifies the existing position.

(v) Section 8 of General Clauses Act will apply only to a provision and not when the entire enactment has been repealed. Even otherwise Section 8 cannot apply since the reference to RFCTLARR Act is a legislation by Incorporation. Furthermore the MRTP Act is a complete code.

30. We have considered the rival contentions. As suggested by the learned Advocate General, which is not opposed, we have rephrased the question referred, to bring the issue in a sharper focus. The debate lies in a narrow ambit. In view of the decision of the Constitution Bench in Girnar (3), the law is settled that Section 11A of L.A. Act is not applicable to acquisition under Section 125 to 127 of MRTP Act. The Petitioners are attempting to restrict the dicta of Girnar (3) only to Section 11A of L.A. Act contending that it cannot be extended to Section 24(2) of RFCTLARR Act. According to them, the subsequent changes in the law also have made the ratio of Girnar (3) inapplicable. If we hold that the law declared by the Constitution Bench in Girnar (3) holds the field and is made applicable even to Section 24(2) of the RFCTLARR Act, then the Reference will have to be answered in negative. Only if the Petitioners succeed in their endeavour to establish that Girnar (3) is no longer applicable, then the issue is

open for consideration. It is necessary to analyse the decision of Girnar (3) to cull out the ratio underlying the decision. It will have to be examined whether subsequent changes in the law such as, enactment of RFCTLARR Act, amendments to MRTTP Act and framing of Rules by the State of Maharashtra under RFCTLARR Act have made any difference to the law laid down by the Constitution Bench.

31. The relevant provisions are reproduced for ready reference. In Chapter VII of the MRTTP Act, the relevant provisions are Section 125 and 126. Section 127 is of ancillary interest.

Section 125 and 126 read as under :-

"125. Compulsory acquisition of land needed for purposes of regional plan, development or town planning schemes, etc. - Any land required, reserved or designated in a Regional Plan, Development Plan or Town Planning Scheme for a public purpose or purposes, including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public purpose [within the meaning of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013] :

[Provided that, the procedure specified in Sections 4 to 5 (both inclusive) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 shall not be applicable in respect of such lands.]"

* *

"126. Acquisition of land required for public purposes 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 113A acquire the land, -

(a) by agreement by paying an amount agreed to, or

(b) in lieu of any such amount, by granting the landowner or the lessee, subject, however, to the lesseepaying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned on the basis of the principles laid down in the 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 land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final

Development Control Regulations prepared in this behalf provide, or

(c) by making an application to the State Government for acquiring such land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and the land (together with the amenity, if any, so developed or constructed) so acquired by agreement or by grant of Floor Space Index or additional Floor Space Index or Transferable Development Rights under this sections or under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as the case may be, shall vest absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or if the State Government (except in cases falling under section 49 and except as provided in section 113A) itself is of opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013], in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section :

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

(3) On publication of a declaration under the said section 19, the Collector shall proceed to take order for the acquisition of the land under the said Act; and the provisions of that Act shall apply to the acquisition of the said land, with the modification that the market value of the land shall be, -

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

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

and

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

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

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

(4) Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration,] is not made, within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning [(Amendment) Act, 1993)], the State Government may make a fresh declaration for acquiring the land under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette, made for acquiring the land afresh."

* *

32. Section 11A of the L.A. Act reads as under :-

"11A. Period within which an award shall be made.--(1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation.--In computing the period of two years referred to in this section the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

* *

33. Section 24 of the RFCTLARR Act is reproduced as under :-

"24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases : - (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), -

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then all provisions of this Act relating to the determination of

compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in subsection (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894), whereas award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

34. When the appeal filed by the Girnar Traders in the Supreme Court first came up for consideration of the two learned Judges, they found that a question of importance has arisen, which needs to be referred to a larger bench. This question was referred to the bench of three Judges who in turn referred the same to the Constitution Bench. The genesis of the reference to the Constitution Bench is in paragraph 20 in the decision of Girnar (1). "20. We, therefore, see no good reason as to why the provisions introduced in the Land Acquisition Act, 1894 by Central Act 68 of 1984 should not be read into an acquisition under Chapter VII of the MRTP Act, to the extent not precluded by the MRTP Act, 1966. Section 11A being one such section, it may have to be applied to the acquisition under Chapter VII of the MRTP Act." (emphasis supplied)

Though at that time the two learned judges opined that Section 11A could be made applicable, what is of important is to note that Section 11A alone was not under consideration, but it was referred to as one such Section.

35. We will now proceed to examine the decision in Girnar (3). A comprehensive analysis of this decision and the ones followed it, is necessary in view of the attempt of the Petitioners to dilute their ratio.

36. To answer the question referred to it the Bench of five learned judges took note of several decisions and made a detailed analysis of the statutory provisions. The MRTP Act is enacted for planned development. Before the Act came into force, there was no provision to control the development of land in peripheral areas outside municipal limits which resulted in haphazard development. The object of regional planning is to facilitate appropriate use of the land. The Bench noted that the scheme of MRTP Act primarily focuses on

planning and development of land in the State of Maharashtra. The expression "development" under Section 2(vii) of MRTP Act is defined in wide terms.

37. In the course of discussion in the report, the Constitution Bench compared the provisions of amended and unamended Section 127 of MRTP Act which dealt with lapsing of reservation. It noticed that the legislature was aware of that provision of Section 11A permitted lapse of entire acquisition proceedings after prescribed period, yet the legislature opted to amend Section 127 by the Amendment Act of 2009 in the manner it has been amended. The Constitution Bench culled out a legislative intent from the said amendment to complete all proceedings within the framework of the MRTP Act. The Bench further observed that the primary object of the MRTP Act being planned development, the acquisition of land would take place only when the land is reserved, designated or required. MRTP Act provides as to how the Development Plan shall be prepared, notified and implemented. A mechanism for planning, implementation and adjudicatory process is specifically provided under MRTP Act. The bench stressed that the MRTP Act is dependent on L.A. Act for a limited purpose of completing the process for determining the compensation.

38. The Constitution Bench scrutinized the provisions of the L.A. Act and noted that the acquisition proceedings commenced with the issuance of notification under Section 4 of the L.A. Act, against which interested persons can file objections under Section 5A, leading to a declaration under Section 6 and then an award. The acquisition proceedings are commenced with the issuance of notification under Section 4 of the L.A. Act and would end with the payment of compensation for such an acquired land. A detailed comparison of provisions of L.A. Act and MRTP Act in a tabular form was undertaken.

39. The Constitution Bench expounded the concept of selfcontained code. For an enactment to be in self-contained code, it must be in complete legislation purpose for which it is enacted. The Bench then analysed the MRTP Act and held that it is a selfcontained code. The rationale for this conclusion of the Constitution Bench is as follows. The principal object of MRTP Act is planned development in the State of Maharashtra by preparing Development Plans for Regions, Town Planning Schemes and constitution of various authorities to achieve the said purpose. Incidentally, it includes the function of acquisition of land but for a very limited purpose. The acquisition under MRTP Act has to be of the land which is required, reserved or designated under any Development Plan. The Act establishes authorities, their respective power, and functions for attaining the object of the Act. A complete scheme is provided under the MRTP Act for the planned development. Various steps are required to be taken by the authorities, right from the stage of preparation of Draft Development Plan to its finalization, and also preparation and finalization of all Regional and Town Planning Schemes. The MRTP Act spells out as to how these schemes are to be implemented and by whom. The right of the interested person to raise objections, pre-finalization of the respective plans, is specifically provided. The authority before whom such

objections are to be raised and who is to be granted a hearing and by whom is specified. All aspects, right from the initial stage to its final execution are laid down. The MRTTP Act also provides machinery for finalization and determination of disputes between the authorities and private parties. Furthermore, a person is entitled to raise all disputes including the dispute of ownership. An Arbitrator nominated under the MRTTP Act has the jurisdiction to decide all such matters. Some of his decisions are final, while on most of other decisions, an appeal lies to the Tribunal. The MRTTP Act apart from being a code in itself has a primary focus on planned development and other matters are incidental. The provisions of the MRTTP Act have to be implemented in their own field. For preparation, approval and execution of the development plans the MRTTP Act hardly depends on the provisions of the Land Acquisition Act. Some provisions of the MRTTP Act have specifically referred to some of the provisions of the L.A. Act but for the limited purpose of acquiring land. With this reasoning, the Constitution Bench concluded:

"85. There can hardly be any hesitation in concluding that the MRTTP Act is a self-contained code and does not lose its colour or content of being a self-contained code merely because it makes a reference to some of the provisions of Land Acquisition Act for acquisition of land for the purpose of MRTTP Act and determination of compensation in that behalf. The referred provisions of the Land Acquisition Act may only be taken recourse to that limited extent, within the extensive framework and for the purpose of MRTTP Act. Therefore, MRTTP Act is an Act which completely provides for various steps in relation to execution of its object, constitution of various authorities to implement the underlying scheme of planned development, machinery for interested persons to raise their claims for adjudication under the provisions of this Act or at best to an authority referred to in the Act. Thus, we have no hesitation in holding that the MRTTP Act is a complete code in itself. Whether the provisions of the Central Act 68 of 1984, with particular reference to Section 11A, can be read into and treated as part of the MRTTP Act on the principle of either legislation by reference or legislation by incorporation?"

(emphasis supplied)

40. The Constitution Bench dealt with the aspect as to whether Section 11A could be read into in the MRTTP Act either on the principal of legislation by Reference or legislation by Incorporation. The Constitution Bench made it clear that having once held that the MRTTP Act is a Code in itself, the application of either of the doctrines that is the legislation by Reference and legislation by Incorporation would lose its significance, particularly when two Acts exist and operate without conflict. The Constitution Bench considered this aspect as an alternate submission to that effect was made. Section 8 of the General Clauses Act was also alluded to by the Bench. The Bench observed that both, the MRTTP Act and L.A. Act are codes within themselves. The State Legislature, while enacting the MRTTP Act referred to the specific sections of the L.A. Act in the provisions of the

MRTP Act. None of the sections require application of the provisions of the L.A. Act generally. On the contrary, there is a specific reference to certain sections of the L. A. Act in the provisions of the MRTP Act. The Bench also observed that Section 126(2) of the MRTP Act refers to Section 6 only for format and the acquisition proceedings commence by issuance of declaration under Section 126(2). The amendment to Section 127 of the MRTP Act indicated a legislative intent to exclude application of Section 11A. After a detailed analysis, the Apex Court held that it was a case of legislation by Incorporation and the reference to provision of the L.A. Act is specific as opposed to general. The Constitution Bench observed that it would lead to irresolvable conflict if a provision like Section 11A of L.A. Act to be read with MRTP Act.

41. Having held that L.A. Act was a case of legislation by incorporation in MRTP Act, the Constitution Bench in *Girnar* (3) then proceeded to analyse the doctrine of pith and substance and harmonious construction of the statutes. After a detailed analysis on that issue, the Bench observed that if doctrine of pith and substance is applied to the case in hand, it is clear that in substance the MRTP Act was for planned development, unlike the L.A. Act whose object to acquire the land and disburse compensation. The Bench further observed thus : It is more than clear that in substance the MRTP Act is aimed at planned development, unlike the L.A. Act where the object is to acquire land and disburse compensation in accordance with law. Only those provisions of the L.A. Act which apply to acquisition of land, determination and disbursement of compensation as per law, can be read into the MRTP Act, but of the provisions of the L.A. Act relating to default and consequences thereof, including lapsing of acquisition proceedings, cannot be read into the MRTP Act. It is for this reason that neither they have been specifically incorporated into MRTP Act nor they can be absorbed objectively into that statute. The bench categorically observed that if provisions such as Section 11A are read as part of the MRTP Act, they will destroy the very essence, object and purpose of this enactment.

42. In conclusion, the Constitution Bench answered the Reference in *Girnar* (3) thus :-

"191. Having said so, now we proceed to record our answer to the proposition referred to the larger Bench as follows :

"For the reasons stated in this judgement, we hold that the MRTP Act is a self-contained code. Further, we hold that provisions introduced in the Land Acquisition Act, 1894 by Central Act 68 of 1984, limited to the extent of acquisition of land, payment of compensation and recourse to legal remedies provided under the said Act, can be read into an acquisition controlled by the provisions of Chapter VII of the MRTP Act but with a specific exception that the provisions of the Land Acquisition Act in so far as they provide different time frames and consequences of default thereof including lapsing of acquisition proceedings cannot be read into the MRTP Act. Section 11A of the Land Acquisition Act being one of such provisions cannot be applied to the acquisitions

under Chapter VII of the MRTTP Act."

(emphasis supplied)

43. In the case of Offshore Holdings, the Constitution Bench considered the provisions of the Bangalore Development Authority Act to ascertain if Section 11A of the L.A. Act could be made applicable. It is to be noted that the provisions akin to the Chapter VII of the MRTTP Act is not found in the BDA Act. However, the Constitution Bench, after analysis of the provision of BDA Act found that it was complete code and its primary object is planned development, Section 11A and a provision regarding lapsing could not be made applicable. The Constitution Bench in the case of Offshore answered the reference as under :-

"125. Having said so, now we proceed to record our answer to the question referred to the larger Bench as follows :

For the reasons stated in this judgment, we hold that the BDA Act is a self-contained code. Further, we hold that provisions introduced in the Land Acquisition Act, 1894 by Central Act 68 of 1984, limited to the extent of acquisition of land, payment of compensation and recourse to legal remedies provided under the said Act, can be read into an acquisition controlled by the provisions of the BDA Act but with a specific exception that the provisions of the Land Acquisition Act insofar as they provide different time-frames and consequences of default thereof, including lapsing of acquisition proceedings, cannot be read into the BDA Act. Section 11A of the Land Acquisition Act being one of such provisions cannot be applied to the acquisitions under the provisions of the BDA Act."

This is how the Constitution Bench in both these cases analysed the provisions and laid down the law regarding the town planning laws, which are code in themselves.

44. Now to consider the rival contentions advanced. First we will consider the contention of Mr. Anturkar based on deeming provision in Section 126(2) of the MRTTP Act. According to Mr. Anturkar, the Section 126(2) of the MRTTP Act had categorically stated that the notification issued therein would be deemed to be a declaration duly made under Section 6 of the L.A. Act. He contended that this facet was not argued before the Constitution Bench in Girnar (3), and it is open to this Full Bench to consider the same on its own merits and to come to a conclusion different than the Constitution Bench. Mr. Anturkar relied upon various Judgements to contend that a decision of the Superior Court cannot be read as a statute and a ratio cannot be culled out from few stray observations.

45. We have chosen to deal with this submission out of turn for a reason. In view of the free ranging arguments at the bar during the hearing it is necessary for us to ringfence the discussion by drawing the contours of the enquiry. It is also necessary to highlight the legal position governing the exposition of law by the Constitution Bench and its binding nature.

46. The concept of Constitution Bench is traceable to Article 145 of the Constitution of India. This article confers rulemaking power on the Supreme Court to regulate generally the practice and procedure of the Court. Article 146(3) lays down that minimum number of Judges to sit for the purpose of deciding a substantial question of law as to the interpretation of the constitution, shall be five in number. Article 146(3) mandates that the substantial questions of law as to the interpretation of the constitution are to be decided by a bench not less than five Judges. When such a question of interpretation of the Constitution arises before a bench of lesser number of Judges, the matter is referred to the bench of five Judges, thus known as a Constitution Bench. Reading the Article 146(3) along with Article 141, it is clear that the authoritative pronouncement of a Constitution Bench declaring a position of law is final and must be followed by all Courts, including the Benches of the supreme court of a strength smaller than five. The purpose of referring a question to the Constitution Bench is to give a quietus to the legal controversies and bring about a certainty in law.

47. In the case of South Central Railway Employees Cooperative Credit Society Employees Union v/s. B. Yashodabai and Ors., 2015(2) SCC 727 the bench of three learned Judges of the Supreme Court held that when a higher Court has given a particular decision, the lawyers and litigants cannot be permitted to argue that something that was correct but was not argued before the higher Court and try to distinguish the judgement on that ground. The bench cautioned that it merely on that ground the Courts are permitted to take a different view, then the entire law regarding precedents will be in jeopardy. As regards the binding nature of precedents, even in respect of the benches of the Supreme Court with lesser number of judges than the Constitution Bench, the law is settled. In the case of Official Liquidator v/s. Dayanand & Ors., 2008(10) SCC 1 the bench of three learned Judges of the Supreme Court had occasion to deal with a judgement of two learned Judges of the Court in U.P. SEB v/s. Pooran Chandra Pandey, 2007(11) SCC 92. The Bench of two learned Judges had expressed doubt in respect of the correctness of the Constitution Bench presiding in the case of State of Karnataka v/s. Umadevi (3), 2006(4) SCC 1. The three learned Judges in Official Liquidator discussed the law regarding precedents and noted with disapproval the instances when benches of the High Court had gone to the extent of questioning the law laid down by the Apex Court. The learned Judges in this decision emphasised the nature of the binding precedents.

48. Therefore, even though the learned Counsel for the Petitioners have attempted to distinguish the decision in the case of Girnar (3) and have also attempted to urge that a particular aspect was not argued, while dealing with these submissions, we have to be mindful of the hierarchical system of Courts and the resultant need of judicial discipline.

49. Continuing further on the submission made by Mr. Anturkar, even otherwise, it is not correct to contend that the effect of Section 126(2) was not under consideration of the Constitution Bench. As regards the contention based on

deeming provision in Section 126(2) of MRTTP Act is concerned, an argument was advanced before the Apex Court in *Girnar* (3). It was specifically argued that once a notification under Section 126(2) is issued, automatically the provisions of Section 6 and complete mechanism for acquisition of land under L.A. Act comes into operation. In paragraph 20, the relevant argument was referred to as under :-

"20. ... the contentions raised on behalf of the appellants are:

1....

2...

3. In terms of Section 125 of the MRTTP Act, the purpose of acquisition shall be deemed to be a public purpose within the meaning of the Land Acquisition Act. The provisions of Section 126 of the MRTTP Act require application of the provisions of the Land Acquisition Act. Once notification under Section 126(2) is issued, automatically the provisions of Section 6 and complete mechanism for acquisition of land under the provisions of the Land Acquisition Act comes into operation and, thus, the provisions of Section 11A of the Land Acquisition Act would become part of such acquisition necessarily.

4...

5...

6..

Answering this contention, after examining the scheme of Section 126 of MRTTP Act, the Bench observed :-

"125. In terms of Section 126(1)(c) of the MRTTP Act, the application to the State Government has to be made for acquiring such land under the Land Acquisition Act. Such land refers to the lands which are required only under the provisions of the MRTTP Act. Section 126(2) refers to Section 6 of the Land Acquisition Act only for the purpose of format in which the declaration has to be made. In terms of Section 126(3), on publication of the declaration, the Collector shall proceed to take order for acquisition of the land under the State Act, i.e. for the purpose of acquisition of land; the procedure adopted under the Land Acquisition Act shall be adopted by the Collector and nothing more. The afore-referred provisions of the State Act clearly frame a scheme for planned development with limited incorporation of some of the provisions of the Land Acquisition Act."

(emphasis supplied)

The learned judges further held that the proceedings under MRTTP Act are commenced by issuance of a declaration under Section 126(2) and thereafter further procedure is prescribed under the L.A. Act. Bench specifically noted the reference to Section 6 of L.A. Act under Section 126(2). Thus, it cannot possibly be contended that Section 126(2) and the deeming provision in Section 126(2)

was not in contemplation of the learned judges. In fact, the Constitution Bench made a specific reference to said provision and held that it is upon the issuance of notification under Section 126, in the format provided under Section 6 of L.A. Act, the acquisition proceedings commence and thereafter taken for under the L.A. Act and culminate into an award. We, therefore, cannot accept the submission advanced by Mr. Anturkar.

50. The law laid down in *Girnar (3)* was further followed in subsequent decisions in respect of other laws governing planned development. A question arose before the bench of two learned Judges of the Apex Court in the case of *Bankalal v/s. Special Land Acquisition Officer*, 2014(15) SCC 116 as regards the applicability of Section 11A of L.A. Act to the Nagpur Improvement Trust Act, 1966. A notification under Section 39 of Nagpur Improvement Trust Act, 1966 was issued, and the land was acquired for the Eastern Industrial Area Street Scheme. When the matter reached the Apex Court, an argument was advanced on behalf of the appellants that after insertion of Section 11A of L.A. Act, there was a statutory obligation on the part of the respondents to make an award within stipulated period from the date of publication, failing which the acquisition proceedings would lapse. The bench referred to the earlier decision in the case of *Nagpur Improvement Trust v/s. Vasantrao and Ors.*, 2002(7) SCC 657 wherein it was held that the provisions of L.A. Act are incorporated in the State Act, and subsequent amendments to L.A. Act would have no effect. The bench also took note of decision of the Constitution Bench in *Girnar (3)* and noted the ratio therein that Section 11A will not apply to the law relating to planned development which is a complete Code. The bench concluded that the Nagpur Improvement Trust Act, 1966, which was enacted for planned development, was also code in itself and therefore, Section 11A cannot be made applicable.

51. When the RFCTLARR Act came in force, a bench of two learned Judges of the Apex Court in the case of *Special Land Acquisition Officer, KIAD v/s. Anusaya Bai*, 2003(7) SCC 313 considered the question of applicability of Section 24(2) of the RFCTLARR Act to the proceedings initiated under Karnataka Industrial Areas Development Act, 1966. The Division Bench of the Karnataka High Court had accepted the contention that Section 24(2) of RFCTLARR Act applied to KIAD Act and had quashed the acquisition proceedings. The decision was appealed from by the Corporation. The Apex Court took note of the earlier decision in the case of *Munithimmaiah v/s. State of Karnataka*, 2002(4) SCC 326 regarding applicability of Section 6 and Section 11A of the L.A. Act. In *Munithimmaiah*, the Apex Court had held that KIAD Act is a code in itself and therefore Section 11A of the L.A. Act was not applicable. Following this law, the learned Judges in *Anusaya Bai*, on parity of reasoning, held that the provisions of Section 24(2) of the RFCTLARR Act cannot be made applicable to the KIAD Act. The Apex Court allowed the appeal filed by the State and set aside the decision of the Division Bench. Thus, even while considering the provisions of Section 24(2), the Apex Court in the case of *Anusaya Bai* applied the legal position of not applying the provisions leading to lapsing of acquisition and different time frames to the State

enactments governing planned development which are codes in themselves. The law laid down by the Constitution Bench in *Girnar* (3) and *Offshore Trading* stood reiterated.

52. An order passed by the three Judge Bench of the Apex Court in *Gurcharan Singh and Ors. V/s. State of Punjab & Ors.* dated 4 July 2014, was brought to our notice by Mr. Vijay Patil, learned Advocate. The order reads thus :-

"Mr. Raju Ramachandran, learned Senior Advocate for the Petitioners, sought to invoke Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "the 2013 Act") and submitted that acquisition proceedings have lapsed.

Mr. Salil Sagar, learned Senior Advocate for the Respondent No.2 submits that acquisition in the present case was initiated and concluded under the Punjab Town Improvement Act, 1922.

Section 24 of the 2013 Act reads as under :-

"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases - (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894) -

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in subsection (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act; Provided that where an award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

A close reading of Section 24 makes it clear that land acquisition proceedings under Land Acquisition Act, 1894 (for short, "the 1894 Act") are deemed to have lapsed in certain cases which are indicated in the provision. Since the acquisition of the subject land has taken place under the 1922 Act and not under the 1894

Act, Section 24 has no application at all.

The argument concerning Section 24 of the 2013 Act and lapsing of the acquisition proceedings has no merit and is over-ruled. The grounds raised in the special leave petitions in challenging the impugned judgment will be considered at the time of final disposal. List the special leave petitions for final disposal on a non-miscellaneous day within six months."

The case arose from the acquisition initiated and concluded under the Punjab Town Improvement Act, 1992. The bench over-ruled the arguments with acquisition of the land taken place under the Panchayat Act and not under the L.A. Act and therefore, Section 24 had no application. It appears that though Special Leave Petition was not disposed of on that date, the argument relating to Section 24 of the RFCTLARR Act was over-ruled and the matter was directed to be listed for final disposal on other points.

53. The Petitioners sought to rely on the decision in the case of Karnail Kaur v/s. State of Punjab, 2015(1) Scale 598. We have gone through the decision and also the text of the Punjab Regional Town Planning Act. Though in this decision the Apex Court applied the provision of Section 24(2) of RFCTLARR Act to the acquisition under Punjab Regional Town Planning Act, 1955 the scheme of the Punjab Act is materially different than the MRTTP Act. There are no provisions analogous to Chapter VII of the MRTTP Act in the Punjab Act. Chapter V of the Punjab Act provides that the State Government has to acquire the land required for the purpose of the authority under the provisions of the L.A. Act. The entire gamut under L.A. Act has been incorporated for all purposes. Further, in the case of Karnail Kaur, the preliminary notification was issued under Section 4 of the L.A. Act for the acquisition of lands, objections were raised under Section 5A, and a declaration issued under Section 6 of L.A. Act was published. The entire acquisition proceedings were under the provisions of L.A. Act. Nothing is demonstrated before us that the provisions akin to Section 126 and 127 of the MRTTP Act were under consideration of the Apex Court in the case of Karnail Kaur. Therefore, the decision in the Karnail Kaur will not assist the Petitioners.

54. It was contended by Mr. Godbole that Section 11A of the L.A. Act deals with the situation prior to award and Section 24(2) RFCTLARR Act deal with situation post award and these two concepts are fundamentally different. In the case of Delhi Development Authority v/s. Sukhbir Singh and Ors., 2016(2) SCC 258 , the bench of two learned Judges held that there is a difference in phraseology between Section 11A of L.A. Act and Section 24(2) of the RFCTLARR Act inasmuch as the expression used in Section 24(2) is that "acquisition deemed to have lapsed" while in Section 11A the expression is "lapse". Based on these distinctions, it was argued that even if the acquisition proceedings are permitted to lapse under Section 24(2), all that will result will be payment of extra compensation and the government can acquire the land again and since the reservation will continue, the scheme of the MRTTP Act will not be disturbed.

55. We do not find that these differences will have a bearing on the foundational basis of the present enquiry, because the moot question still is the effect Section 24(2) on the planned development, which is the prime object of the MRTP Act. None of the Petitioners have contended, and cannot contend, that Section 24(2) does not introduce a different time frame and consequences of default, resulting in lapsing of acquisition. The argument regarding only lapsing of acquisition and not reservation, ignores that there will be an introduction of an alien time frame and consequences of defaults, which will certainly interfere with the object to achieve under the MRTP Act. Secondly, an identical argument was rejected by the Constitution Bench in *Girnar* (3). The Apex Court dealt with this aspect and observed that: "130. While referring to Section 6 of the Land Acquisition Act, the State Legislature has not adopted, specifically or otherwise, the period mentioned in proviso to Section 6(1) of the Land Acquisition Act. On the contrary, different time frames have been postulated under different provisions of the MRTP Act. If those limitations of time are not adhered to by the concerned authorities, the consequences have also been provided therefor. From the stage of initiation of steps for preparation of draft plans to the finalization of the scheme, it takes considerable time. Furthermore, its implementation at the ground level, takes still much more time. If this entire planned development which is a massive project is permitted to lapse on the application of Section 11A of the Central Act, it will have the effect of rendering every project of planned development frustrated. It can hardly be an argument that the Government can always issue fresh declaration in terms of Section 6 of the Land Acquisition Act and take further proceedings. Recommencement of acquisition proceedings at different levels of the hierarchy of the State and Planning Authority itself takes considerable time and, thus, it will be difficult to achieve the target of planned development."

(emphasis supplied)

56. The Constitution Bench clarified this aspect in clear and cogent terms to avoid attempts to fracture the law regulating the planned development. Such time frames and consequences of default will result in the State starting acquisition proceedings all over again. This will frustrate a development plan and will make substantive provision of the MRTP Act unworkable. It will be too simplistic to assume that lapsing of acquisition but not the reservation (if that legal position is to accepted), will not affect the time schedule of the planning and development.

57. The above analysis in *Girnar* (3) and *Offshore Holdings* shows that neither the Reference nor the conclusion were qua Section 11A of L.A. Act alone. The foundation was the nature of an enactment governing a specific purpose and which is a complete code geared to achieve that purpose. Statutes which are code in itself in the matter of planned development, such as the MRTP Act are not to be tinkered with by applying different time frames and consequences of defaults like lapsing of acquisitions.

58. In the circumstances, there is no merit in the contentions that the decision of Girnar (3) is restricted only to Section 11A of the L.A. Act. Girnar (3) did not restrict itself with a particular provision, but dealt with a wider legal concept.

59. There are various reasons why town planning laws are necessary and why they must be allowed to operate unhindered. Town Planning achieves various social and economic objectives. Careful and proper planning, by providing a physical environment conducive to health and well-being, leads to better quality of life. Well through-out transportation facilities provide convenient and easier commuting which in turn leads to social cohesiveness. Parks, gardens, open spaces enrich the physical and mental health of the residents. Planning yields economic results by increasing productivity. Town planning is aimed at fulfilling social and economic objectives which go beyond the physical form and arrangement of buildings, streets, parks, utilities and other parts of the urban environment. Town planning is thus essential for efficiency, well-being of all and leads to increase in wealth in the long run.

60. While carrying out the planned development, a balance has to be achieved between the individual rights and larger good of the society. The MRTTP Act has its own scheme for achieving such a balance. The MRTTP Act has an elaborate methodology of identification and finalization of the need for public amenities and to initiate the process for acquisition of the land for fulfilling the need so determined. The MRTTP Act has its checks and balances such as Section 127, which mandates that a private land cannot be placed under reservation indefinitely depriving the owner to put it to full use. An embargo has been placed on the powers of the State by providing a time limit under Section 127 within which lands so identified needs to be acquired. If the acquisition proceedings would lapse in this manner, it would frustrate the rights of the State as contemplated under Section 126 as well as 127 of the Act. Such cause of action will disturb the equilibrium of MRTTP Act and cause legal and practical impediments.

61. Thus, the position of law in its simplest sense is that schemes of town planning laws such as the MRTTP Act, which are complete codes in themselves, cannot be disrupted by adopting different time frames and on default consequences of lapsing of acquisition. Such outside concepts will produce imbalances in the functioning of these enactments.

62. In light of the above position of law, the question is whether there is any fundamental change in the MRTTP Act. As long as the MRTTP Act continues to be a code in itself, an outside provision introducing different time frames, consequences of default resulting in lapsing of acquisition, cannot be made applicable to the MRTTP Act.

63. To overcome this hurdle, the petitioners sought to argue that subsequent legislative changes have altered the character of the MRTTP Act so far as the controversy at hand is concerned. Heavy reliance was placed on the proviso to

Section 125 of the MRTP Act amended in the year 2015. Section 125 of the MRTP Act states that any land required, reserved or designated shall be deemed to be for public purpose under the RFCTLARR Act (earlier L.A. Act). Proviso was appended to Section 125 by virtue of Maharashtra Act 42 of 2015 with effect from 29 August 2015, stating that the procedure specified in Section 4 to 15 of the RFCTLARR Act will not apply. Based on the proviso an argument is advanced by the Petitioner that since only Section 4 to 15 stand excluded the legislative intent is to apply the other provisions RFCTLARR Act such as the Section 24(2). We find no merit in this submission for the following reasons.

64. Section 4 to 10 of RFCTLARR Act are primarily concerned with the social impact assessment. Section 4 provides for the preparation of Social Impact Assessment study wherein detailed methodology is laid down how such a study is to be carried out. When the land is intended to be acquired for a public purpose, the appropriate Government has to consult the concerned Panchayat, Municipality or Municipal Corporation and carry out a Social Impact Assessment study in consultation with them. A public hearing for the assessment is carried out. When an assessment study is prepared under Section 4 as per Section 6 it has to be published. The appropriate Government has to ensure that the Social Impact Assessment Report is evaluated by an independent Multi- Disciplinary Expert Group consisting, amongst others two nonofficial, social scientists, two experts on rehabilitation and a technical expert on the related subject project. If the expert group is of the opinion that the acquisition is for a public purpose and potential benefits outweigh the social costs, it will make a specific recommendation. Social Impact Assessment report is to be examined by the State Government. Form II prescribed under the RFCTLARR Rules 2014 gives checklist for the Social Impact Assessment report. The checklist inter alia includes, the extent of agricultural use, a quality of land, soil, live-stock, food security, access to natural resources; access to markets; demographic changes; impacts on the norms, beliefs, values and cultural lives, separation of family cohesion. Section 10 deals with safeguarding food security and to ensure that no irrigated multi-cropped land is acquired.

65. Section 11 of RFCTLARR Act deals with publication of preliminary notification, and the powers of the officers are laid down when the area is required or likely to be required for public purpose. Section 12 deals with the preliminary survey of land and the power of the officers. Section 14 refers to lapse of Social Impact Assessment Report when the notification is not issued under Section 11 of the Act. Section 15 deals with the rights of the objectors to lodge objections.

66. The above analysis of Section 4 to 15 of RFCTLARR Act will show that Section 4 to 9 primarily deal with social impact assessment. Section 10 safeguards food security. Section 11 to 14 are part of the Chapter which deals with notifications and acquisition, which correspond to Section 4 to 6 of the L.A. Act.

67. As mentioned earlier, the MRTP Act has its own machinery for identifying the public need and ascertaining what is good for the society. The expression

"Development" has been defined in wide terms under the MRTP Act which is relatable to planned development. The Act contemplates both, Regional and Development plan as well as the Town Planning Scheme. Once the region is notified under MRTP Act, a Regional Plan is prepared. The plan provides for the matters contemplated under Section 14. The plan is open to inspection and objections and suggestions are to be notified. The Draft Regional plan, before it is finalized, has to be published and the objections are invited from the general public. The Act also provides for a town planning scheme. For certain town planning schemes, a reference to the arbitrator is provided for. Therefore, the MRTP Act has its special methodology to ascertain what is in the larger interest of planned development. The Act also has its safeguards of permitting public participation in the decision making.

68. In view of the above position, the applicability of Section 4 to 15 of the RFCTLARR Act is hardly necessary in MRTP Act. Since the Social Impact Assessment study is required if the acquisition generally is to be made for a public purpose, the State Legislature thought it fit to clarify the position that such Social Impact Assessment study is not required when the land is to be acquired under the MRTP Act. The special provisions to safeguard food security and the mandate on non-acquisition of irrigated agricultural land, are not strictly relevant to the MRTP Act. Section 11 of RFCTLARR Act is relatable to Section 4 of the L.A. Act. Section 15 of RFCTLARR Act is relatable to Section 5A of the L.A. Act. Even when the L.A. Act was in force, for the acquisitions under Section 126(2) of MRTP Act operation of Section 4 and Section 5A of the L.A. Act was excluded. Section 6 was referred to for the purpose of format. By excluding the application of Section 4 to 15 of the RFCTLARR Act, the legislature has merely clarified the existing position to remove any doubt. By enacting the proviso to Section 125 of MRTP Act, the State legislature, therefore, has not brought in change in law, but to obviate any confusion, by way of precaution has merely re-stated the existing position.

69. It is strenuously contended on behalf of the Petitioner that it is the legislative intent to apply the other provisions of RFCTLARR Act including Section 24(2) and the non-reference to this Section in the Proviso to Section 125 of the MRTP Act would indicate that the legislature wanted to apply Section 24(2) and to overcome the dicta in *Girnar* (3). This argument cannot be accepted. The Statement of Objects of the Maharashtra Act 42 of 2015, is placed on record. As pointed out by the learned Advocate General, the Statement of Objects and Reasons only state that it is necessary to replace the reference to the provisions of L.A. Act in view of enactment of RFCTLARR Act. By this amendment, Section 127 of the MRTP Act is also amended. There is absolutely no indication of any attempt to dilute the decision of *Girnar* (3). Therefore, by merely incorporating a clarifactory proviso, it cannot be concluded with that the legislature, by implication, wanted to over-ride the decision of the Constitution Bench and apply a provision which will introduce unworkable consequences in the statute.

70. Next contention in respect of the proviso to Section 125 of MRTP Act is based on Section 8 of the General Clauses Act, 1897. Section 8 of the General Clauses Act reads thus: - " 8. Construction of references to repealed enactments - (1) Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

(2) [Where before the fifteenth day of August 1947, any Act of Parliament of the United Kingdom repealed and re-enacted], with or without modification, any provision of a former enactment, then reference in any [Central act] or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.]"

71. The Petitioners contended that since the L.A. Act stands repealed by the RFCTLARR Act and the law has been re-enacted, and unless a contrary intention appears, the reference in MRTP Act has to be construed as reference to the provisions so re-enacted, in view of Section 8. We have considered this submission. Since the normal effect of a repeal is to remove the enactment from the statute book as if it was never passed, which may lead to various complications, Section 8 has been enacted. This provision would apply when there is a mere reference to a provision of one statute to another without incorporation, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted. The question of legislation by Incorporation, of a law governing land acquisition, as regards the MRTP Act, is already concluded in Girnar (3). It was pointed out by the learned Advocate General that Section 8 of the General Clauses Act, and in a given case, the State General Clauses Act, would only apply when a particular provision of the Act is repealed and re-enacted, and it does not take into consideration the contingency of a repeal of the entire enactment and the reenactment.

72. Even assuming Section 11A was repealed and re-enacted and a provision has been brought into effect such as Section 24(2) of RFCTLARR Act, still the dicta of the Constitution Bench not to make a provision providing for default resulting in lapsing of acquisition, will apply. No provision which provides different time frame and lapsing of acquisition can be imported into the scheme of MRTP Act. Neither by implication or by resorting to Section 8 of General Clauses Act, this position of law can be overridden. No such legislative intent can be culled out from the proviso to Section 125 nor any contra-intention is apparent. The Petitioners are trying to build too tall an edifice from an innocuous proviso.

73. Apart from the scheme of the MRTP Act, there is an intrinsic indication in the Section 24(2) of RFCTLARR Act itself as to why it cannot be made applicable. Section 24(2) is reproduced earlier. This section will apply if the acquisition proceedings are initiated under the Land Acquisition Act. The crucial phrase used

in Section 24(2) is "initiated under the Land Acquisition Act". The word "initiated" has not been defined under the RFCTLARR Act. The phrase "initiated of Land Acquisition Act" was not used in the L.A. Act. This phrase has been employed in the RFCTLARR Act in Section 24. The legislature has deliberately chosen the phrase "initiated". Initiation is not mere presentation but consciously putting the process in motion. The dictionary meaning of the word initiation is "originating", "to start". When the RFCTLARR Act was enacted, the decision of the Constitution Bench in respect of an enactments dealing with planned development which are complete codes, was holding the field and hold the field even today. The Petitioners sought to advance various arguments as to whether Section 4 could be initiation of proceedings or Section 6 of the Act. The dicta of the Constitution Bench is clear. The Constitution Bench in the Girnar (3) at more than three places in the report has reiterated that the proceedings under the L.A. Act commence under Section 4 and under the MRTP Act. For the MRTP Act, there is no notification under Section 4 and an application under Section 126(2) is to be in the format laid down under Section 6 of the L.A. Act. Keeping this dicta in mind, the phrase "initiated under the land acquisition Act" will have to be construed. In our opinion the emphasis in Section 24(2) is on which authority under which Act has initiated the proceedings. Therefore, when the legislature used the phrase "initiated under Land Acquisition Act" it will not cover acquisition proceedings which originate and are consciously put in motion for acquisition for a planned development under the MRTP Act pursuant to an application under Section 126(2). It is settled rule of interpretation that the plain and ordinary meaning is given to the words and only if plain meaning leads to an absurdity, then a purposive interpretation can be resorted to. The plain meaning of the phrase "initiated under Land Acquisition Act" cannot be "initiated under the MRTP Act". We are not considering a challenge to the constitutional validity of Section 24(2), neither we need to carry out the exercise of reading down the provision to save it from the vice of unconstitutionality.

74. As far as effect of this interpretation of section 24(2) to other part of section 24 is concerned, the State Government is empowered under Section 107 of the RFCTLARR Act to enact any law to enhance or add any entitlement which confer higher compensation and to make provisions for rehabilitation and resettlement which are more beneficial. An option is also given to the affected person to choose a better policy. Rules have been framed by the State of Maharashtra in the year 2015. These rules are framed by exercise of powers under Section 109 of RFCTLARR Act. Rule 19 of the RFCTLARR Rules, 2014 reads thus :-

"19. Land Acquisition Proceedings Initiated Under Land Acquisition Act, 1894 -

(1) -----

(2) -----

(3) Where the land is reserved for public purposes according to the Maharashtra Regional Town Planning Act, 1966 (Mah. XXXVII of 1966), and a declaration

under sub-Section (1) of Section 6 of the Land Acquisition Act, 1894 (I of 1894) has been made before the 31st December 2013 and an award under Section 11 of the Land Acquisition Act, 1894 (I of 1894) has not been declared before the 31st December 2013, then the proceeding shall be continued as per the formula provided in Sections 26 to 30 of the Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013)."

Under Rule 19(3), it is laid down that when a land is reserved for public purpose under the MRTP Act, a declaration under Section 6 of the L.A. Act is made before 31 December 2013 and award has not been declared before 31 December 2013, then the proceeding shall continue as per formula provided under RFCTLARR Act. Section 26 to 30 of RFCTLARR Act deal with the determination of the market value, amount of compensation and determination of values of things attached to land and the award of solution. Section 107 of RFCTLARR Act makes it amply clear that the State is empowered to provide better benefits in terms of compensation. In the case of Girnar (3) the Constitution Bench has also made it clear that the provisions in the L.A. Act regarding payment of compensation, recourse to legal remedies provided under the Act can be read into the acquisition controlled by the provisions of Chapter VII of the MRTP Act. This step taken by the State Government is in consonance with the decision of Girnar (3) as well as the State has power to offer better compensation benefits.

75. An argument was sought to be advanced on behalf of the Petitioners that for an acquisition under Section 126 of MRTP Act, the land does not vest when an application is made under Section 126(2) and the observation of the Supreme Court to that effect in the case of Manohar Joshi v/s. State of Maharashtra & Ors., 2012(3) SCC 619 and Girnar (3) are based on incorrect juxtaposition of the Section when it was reproduced in the judgement as there should have been a separate paragraph after categories (a),(b),(c) in Section 126(1). It was contended that the vesting contemplated under this sub-para applies only to categories (a) and (b) and it does not apply to (c). It was submitted that this position has been clarified in the decision of the Supreme Court in the case of Shrirampur Municipal Council v/s. Satyabhamabai Bhimji Dawkher, 2013(5) SCALE 179. It is not necessary to enter into that arena as the issue referred to this Full Bench can be decided on other aspects of the matter as above.

76. Thus, to conclude, it is clear that since Section 24(2) of the RFCTLARR provides different time frame and lapsing of acquisition on default, it cannot be applied to the acquisition initiated under Section 125 to 127 of the MRTP Act. The MRTP Act has not undergone any change from its character as a complete code. Section 24(2) of the RFCTLARR will apply only if the acquisition proceedings are "initiated" under the Land Acquisition Act, and cannot apply if they are initiated under Section 125 to 127 of the MRTP Act. The view taken by the Division Bench of this Court in the Case of Hanumanrao Morbaji Gudadhe lays down correct position of law that Section 24(2) of the RFCTLARR Act cannot apply to acquisition under Section 125 to 127 of the MRTP Act. The subsequent

amendments to the MRTP Act, framing of Rules by the State, and the proviso to Section 125 have not brought in any change in the position of law in this regard.

77. In the result, we answer the reference as under :- "The Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is not applicable to acquisition proceedings initiated in terms of Section 125 to 127 of the MRTP Act."

78. We place on record our appreciation for the efforts taken by all the learned Counsel appearing in the matter and especially for the assistance rendered by Mr. Aspi Chinoy, and Mr. Janak Dwarkadas, learned Senior Advocates as Amicus Curiae.

79. The Registry shall place the Writ Petitions before the Division Bench for disposal.