
(2001) 11 BOM CK 0035

In the Bombay High Court

Case No : Writ Petition No. 2945 of 2001

Prakash Rewadmal Gupta

APPELLANT

Vs

Lonavala Municipal Council and Others

RESPONDENT

Date of Decision : 09-11-2001

Acts Referred:

Maharashtra Regional and Town Planning Act, 1966 — Section 127, 2(3), 22

Citation : (2002) 1 ALLMR 993 : (2002) 2 BomCR 484

Hon'ble Judges : B.P. Singh, C.J;D.Y. Chandrachud, J

Bench : Division Bench

Advocate : K.K. Singhvi, A. and Taru Mehta Tiwari, for the Appellant; R.S. Apte, for respondent No. 1, J.S. Pawar, A.G.P. and V.P. Sawant, for the Respondent

Judgement

D.Y. Chandrachud, J.—The petitioner owns land bearing Survey No. 62/3 and 63/2 situated at Valwan, Lonavala. The land is situated within the Municipal limits of the first respondent. On 1st February, 1978, the Final Development Plan for Lonavala, which was sanctioned by the State Government, came into force. The land belonging to the petitioner was shown as being reserved, together with various other lands, for the purposes of the extension of an educational institution known as the "Dr. B.N. Purandare College". The affiliation of the aforesaid college to the University of Pune is stated to have been cancelled sometime in the year 1977. On 4th July, 1986, the Lonavala Municipal Council resolved to initiate a minor modification to the sanctioned Development Plan u/s 37 of the Maharashtra Regional and Town Planning Act, 1966 ("the Act") so as to change the designation of the site reserved in the Development Plan from the existing reservation for the Dr. B.N. Purandare College to a reservation for the College belonging to the third respondent, the Lonavala Education Trust. The Municipal Council after following the procedure u/s 37 of the Act, submitted the aforesaid minor modification for the sanction of the State Government and by a notification dated 8th June, 1987, the State Government sanctioned the modification. Accordingly, the designation of Site No. 3 of Sector-E was changed from "extension to Dr. B.N. Purandare College" to "Lonavala Education Trust

College and its extension". From the statement at Exhibit "B" to the petition it would appear that several plots of land were reserved for the college belonging to the third respondent. The ownership of the land is shown to be "private" and the acquiring authority is the Municipal Council. On 1st February, 1988, the Draft Revised Development Plan for Lonavala came to be published in which the aforesaid lands belonging to the petitioner together with other parcels of land were shown to be reserved for the college of the third respondent.

2. On 12th June, 2000, a notice u/s 127 of the Act was issued on behalf of the petitioner to the first respondent as the Planning Authority. The notice adverts to the fact that a period of 10 years had expired after the Development Plan for Lonavala came into force on 1st February, 1978. The notice adverts to the revision of the Development Plan in 1988 and recites that since the land had not been acquired under the provisions of the Maharashtra Regional and Town Planning Act, 1966 during the initial period of 10 years after the sanctioning of the Development Plan on 1-2-1978, the reservation had lapsed. By the said notice, the petitioner called upon the Municipal Council to commence acquisition proceedings within a period of 6 months from the receipt of the notice failing which it was stated that the reservation would lapse and the petitioner would be entitled to develop the land. This, it was stated, was without prejudice to the contention of the petitioner that the lands could not be reserved for the third respondent.

3. On 7th July, 2000 the Chief Officer of the first respondent responded to the notice u/s 127 stated that both under the sanctioned Development Plan as well as under the Draft Revised Development Plan, the land belonging to the petitioner had been reserved for the college belonging to the third respondent and for its extension. The Chief Officer in his reply stated that in respect of the aforesaid reservation, the third respondent was the appropriate authority within the meaning of the Act and that accordingly, the responsibility for the acquisition of the land vested in the third respondent. According to the Chief Officer, therefore, it was necessary for the petitioner to furnish a notice u/s 127 to the third respondent.

4. On 30th November, 2000, the third respondent addressed a communication to the Collector, Pune, adverting to the notice of purchase dated 12th June, 2000 which had been served by the petitioner on the Municipal Council. According to the third respondent, this notice was illegal because it had not been served upon the acquiring body. But, without prejudice to the aforesaid contention, it was stated that the third respondent had resolved to commence acquisition proceedings in view of the notice. The third respondent then purported to enclose an application to the Collector u/s 126 of the Act requesting him to commence acquisition proceedings.

5. In the meantime, it would appear that the petitioner had submitted plans for the construction and development of the property to the Municipal Council for its sanction. By a communication dated 30th March, 2001, the Chief Officer of the

first respondent then informed the petitioner that upon receipt of the notice dated 12th June, 2000 issued by the petitioner, the Municipal Council had forwarded the notice to the third respondent within the prescribed period. In view of the Draft Revised Development Plan, the land continued to be under reservation. The development permission which had been sought by the petitioner was thus refused.

6. On these facts, the petitioner has instituted proceedings before this Court under Article 226 of the Constitution, praying for a writ of mandamus (i) declaring that the reservation in respect of the land belonging to the petitioner in the Development Plan has lapsed; (ii) that the reservation for the third respondent which is a private body was illegal; (iii) declaring that the petitioner was entitled to put up construction on the land for his own purpose and use and for a writ of certiorari for quashing and setting aside the order of the Municipal Council dated 30th March, 2001 refusing development permission.

7. The learned Counsel for the petitioner submitted that (i) the reservation in the present case is not for a public purpose and since the third respondent is a private institution, the college of the third respondent and its extension cannot be construed to be a public purpose; (ii) that under Clause (b) of section 22 of the Act, the approval of the State Government was in any event required and which had not been granted and (iii) that even assuming that the reservation was valid, it must be deemed to have lapsed by virtue of the fact that no steps were taken after the receipt of the notice u/s 127 of the Act by the planning authority, the first respondent, for the commencement of the acquisition proceedings.

8. The learned Counsel appearing respectively on behalf of the first and third respondents submitted that imparting of education is a public function and that the reservation of land for an educational institution such as the college in the present case was permissible u/s 22(b) even if the college was not owned by the State, but by a private trust such as the third respondent. Learned Counsel adverted to the provisions of sections 26 and 31 of the Act and submitted that at all stages when the land came to be reserved for the benefit of the third respondent in the Development Plan, the petitioner had an opportunity to object thereto. According to the learned Counsel, there was no objection by the petitioner on the ground that the land had not been reserved for a public purpose. Both the learned Counsel have next submitted that the notice u/s 127 was not valid. On behalf of the third respondent it was submitted that the "appropriate authority" within the meaning of the Act was the third respondent and that the notice was vitiated since it was issued to the Municipal Council and not to the third respondent. The learned Counsel finally submitted that in any event, the Draft Revised Development Plan had been published in 1988 in which the existing reservation was continued. The learned Counsel submitted that there could be no lapsing of the reservation once a fresh reservation had been made in the Draft Revised Development Plan. In such a case, the land holder is not

without a remedy and that if he is aggrieved by the continuation of the reservation in respect of the land, it was open to him to issue a notice of purchase u/s 49 of the Act to the State Government. The planning authority, it was submitted, is required under the provisions of section 46 to have due regard to the provisions of the Draft Development Plan and that being the position, the development permission was validly refused. The petitioner, if he is aggrieved by the refusal of the development permission, ought to have either served a notice u/s 49 of the Act upon the State Government or alternatively preferred an appeal u/s 47 of the Act. The learned Counsel submitted that the existence of a reservation cannot be equated with the existence of the public purpose in all respects and that the public purpose may continue to subsist even if the reservation under the Development Plan lapses. Accordingly, it would be open to the planning authority to impose a fresh reservation for a public purpose in the revised Development Plan. These submissions may now be considered.

9. The first issue to be dealt with is the challenge preferred by the petitioner to the reservation made in favour of the college of the third respondent and for its extension. As already stated earlier, the reservation under the sanctioned Development Plan which came into force on 1st February, 1978, was in favour of the Dr. B.N. Purandare College. The final Development Plan had been sanctioned after suggestions and objections had been invited and that would include objections to the proposed reservation for the college. After the said college was disaffiliated sometime in 1977, the first respondent set in motion the procedure u/s 37 of the Act which culminated in a notification of the State Government dated 8th June, 1987 by which the reservation of the site was altered so as to provide for a reservation for the college run by the third respondent and for its extension. The learned Counsel appearing on behalf of the petitioner submitted that the reservation in favour of the third respondent, which is a private institution, cannot be regarded as a reservation for a public purpose. The learned Counsel adverted to an unreported judgment of a Division Bench of this Court consisting of Chief Justice M.N. Chandurkar and Mr. Justice M.L. Pendse (as the learned Judge then were) in *Champalal Chaganlal Lalwani v. The State of Maharashtra*, Writ Petition No. 198 of 1982 decided on 12th August, 1983. In that case, the notification which was issued u/s 4 of the Land Acquisition Act, 1894 on 24th December 1980 recited that the lands were proposed to be acquired for the extension of the Lonavala Industrial Estate Ltd. which was a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960. A declaration u/s 6 was issued after an enquiry u/s 5-A. The Division Bench held that the public purpose which promoted the State to acquire the land must be evident from the notification itself and it was not open to the State to expound upon that purpose, in the return filed to the writ petition. The Court held that the purpose which was recited in the notification issued under the Land Acquisition Act, 1894 in that case was not a public purpose. After this judgment, which was delivered by the Division Bench of the Court on 12th August, 1983, the Government again issued a fresh notification on 10th October, 1983 u/s 4 of

the Act in which the public purpose which was now stated was the acquisition of additional land for the establishment of an Industrial Estate for the Industries Commissioner, Bombay. While setting aside the subsequent notification on 19th November, 1992 in *Champalal Chhaganlal Lalwani v. State of Maharashtra*, Writ Petition No. 3762 of 1986, decided on 19th November 1992 a Division Bench of this Court held that there was substance in the contention of the petitioner that the acquisition was for the benefit of the third respondent which was a Co-operative Society whose members were desirous of acquiring land for starting their own Industrial units and that could never be a public purpose. The Division Bench held that the establishment of an Industrial Estate for the Industries Commissioner was not a purpose, much less a public purpose. Similarly, in another unreported judgment in *Parvatibai Shankar Durge v. State of Maharashtra*, Writ Petition No. 620 of 1987, decided on 27th November, 1992, a declaration u/s 126 of the M.R.T.P. Act, 1966 read with section 6 of the Land Acquisition Act, 1894, providing for acquisition of land for the running of a Brick Factory was set aside by a Division Bench of this Court on 27th November 1992 holding that it was not the function or duty of the Municipal Council to run a Brick Factory and that the acquisition of the land for that purpose could not be sustained as being for a public purpose.

10. We have perused the judgments which have been relied upon by the petitioner and have had due regard to the principles of law which have been laid down therein. In the present case, it would be necessary at the outset to refer to the provisions of section 22 of the Act which provides for the contents of a Development Plan. u/s 22, a Development Plan has to indicate the manner in which the use of land in the area of the planning authority is to be regulated. Section 22 also provides that a development plan shall indicate the manner in which the development of the land shall be carried out. The section then provides for various matters which the Development Plan shall provide for, in so far as may be necessary. Amongst these matters, Clause (b) provides as follows :

"(b) proposals for designation of land for public purposes, such as schools, colleges and other educational institutions, medical and public health institutions, markets, social welfare and cultural institutions, theatres and places for public entertainment, or public assembly, museums, art galleries, religious buildings and Government and other public buildings as may from time to time be approved by the State Government."

In the context of the urban planning, the Act provides a statutory classification of proposals for the designation of lands for schools, colleges and other educational institutions as constituting public purposes. Clause (b) of section 22 does not mandate that a reservation only for a Government run institution is a public purpose. The question as to whether a reservation for a private educational institution can at all constitute a public purpose for the purposes of land acquisition is not *res integra* but has been considered in several judgments including two judgments of the Supreme Court to which we may presently turn.

In *The State of Bombay Vs. Ali Gulshan*, a Bench of five learned Judges of the Supreme Court considered the question as to whether the then Government of Bombay was entitled u/s 6(4)(a) of the Bombay Land Requisition Act, 1948 to requisition, as for a public purpose, certain premises for "housing a member of the staff of a Foreign Consulate". A learned Single Judge of this Court had held that this was a public purpose within the meaning of the Act, but this judgment was reserved by a Division Bench which held that there can be no public purpose which is not a purpose of the union or a purpose of the State. After referring to the constitutional entries in the Seventh Schedule to the constitution, Chandrasekhara Aiyar, J., speaking for the Supreme Court held thus:

"Though every State purpose or union purpose must be a public purpose, it is easy to think of cases where the purpose of the acquisition or requisition is neither the one nor the other but a public purpose. Acquisition of sites for the building of hospitals or educational institutions by private benefactors will be a public purpose, though it will not strictly be a State or union purpose. When we speak of a State purpose or a union purpose, we think of duties and obligations cast on the State or the union to do particular thing for the benefit of the public or a section of the public. Cases where the State acquires or requisitions property to facilitate the coming into existence of utilitarian institutions, or scheme having public welfare at heart, will fall within the third category above mentioned."

11. More recently, in *Ganapathi National Middle School Vs. M. Durai Kannan (dead) by LRs. and others*, the appellant before the Supreme Court was imparting education upto standard VIII and was an aided institution. Upon a decree for eviction being passed in a suit instituted by the landlord, the appellant moved the Government for acquiring the land and the building so that the Institution could be continued in the same premises. Consequently, a notification u/s 4 of the Land Acquisition Act, 1894 was issued which was followed by declaration u/s 6 after an enquiry u/s 5-A was duly conducted. The Supreme Court held that Article 45 of the Constitution enjoins upon the State to provide free and compulsory education to all children upto the age of 14. The right to receive education was to that extent a fundamental right of every child. Since the State could not impart education by itself, it has recognised private institutions which would discharge that obligation and these institutions were governed in the State of Tamil Nadu from which the appeal originated by the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973. The Supreme Court held that the school was an "educational agency" as defined by section 3(b) of the Tamil Nadu Act, being an institution permitted or deemed to be permitted to establish and maintain a private institution. The Court noticed that the institution was receiving grant-in-aid under the Act and was, therefore, an instrumentality or educational agency of the State imparting education on behalf of the State which is a fundamental right of the citizen. The Court, it must of course be noted, took notice of the fact that the entire expenditure for acquisition was to be met from the public funds. In these circumstances, it was

held that there was clearly a public purpose.

12. Section 22 of the M.R.T.P. Act, 1966 expressly contemplates that the Development Plan make due provision for proposals to designate land for public purposes. Such public purposes are statutorily defined to include the purposes such as schools, colleges and other educational institutions, medical and public health institutions. Even if as submitted by the learned Counsel appearing on behalf of the petitioner, the words "as may from time to time be approved by the State Government" are read as a qualification to the entire part of Clause (b) of section 22, there is nothing to show that the reservation under the present case does not have the approval of the State Government. On the contrary, the proposal for the designation of the land in the present case for the Dr. B.N. Purandare College was included in the final Development Plan which was sanctioned in 1978 by the State Government. Thereafter, a minor modification u/s 37 of the Act was also duly sanctioned by the State Government by which the reservation was altered to one for the college of the third respondent. The third respondent is a society registered under the Societies Registration Act, 1860. In para 12 of the affidavit in reply filed on behalf of the third respondent, it has been stated that the Trust runs a college in the Arts and Commerce faculties at Lonavala. The college offers courses leading upto the Masters degree in Commerce and more than 1200 students are enrolled in the college. It has further been stated that the said college is the only college in Lonavala. The existence of the college and the upkeep of its facilities or infrastructure is thus something in which the general community has a significant interest. The college is recognised and regulated by competent statutory authorities. The dispensing of education is an important public function. This is an area where private institutions function to discharge a role which should be, but cannot be entirely shouldered by the State. Private institutions discharge a part of the responsibility of the State and it has been held that hence, the restrictions which apply to the latter must apply to the former as well. *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.*, . Section 125 of the Act provides that any land required, reserved or designated in a regional plan, Development Plan or Town Planning Scheme for a public purpose or purposes shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894. Having regard to these facts, the provisions of the Act and the judgments of the Supreme Court, there can be no doubt about the fact that the reservation in the present case is for a public purpose.

13. We have already noted the submission which has been urged on behalf of the respondents that the petitioner had at no stage prior to the filing of the petition submitted any objection to the reservation which was made in favour of the third respondent when objections were invited while making the modification of the Development Plan. Finally, before concluding this aspect of the matter, a reference may be made to a judgment of a Division Bench of the Calcutta High Court in *Krishnalal Sadhu and Others Vs. State of West Bengal and Others*, , wherein it was held that the acquisition of land for providing a playground and a

hostel for an educational institution answers the description of a public purpose. Such an acquisition would satisfy the principle that a public purpose should be one in which the general interest of the community as opposed to a particular interest, is served by the acquisition concerned. Similarly, in *Mohon Koiri and Others Vs. State of West Bengal and Others*, , it was held that an acquisition for the expansion and development of a private school which was under the dual control of the Directorate of Education and the State Board of Secondary Education could be regarded as being for a public purpose. The first contention urged on behalf of the petitioner must, therefore, fail.

14. The next point which requires consideration is as to whether the reservation has in fact, lapsed u/s 127 of the Act as contended by the petitioner. Section 127 provides thus :

"127. Lapsing of reservation.---If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final regional plan, or final Development Plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894 (I of 1894), are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan."

The provisions of section 127 have been interpreted by the Supreme Court. In its decision in *Municipal Corporation for Greater Bombay v. Dr. Hakimwadi Tenants Association*, 1988 (1) B.C.R. 578 : 1988 M.L.J. 1, the Supreme Court held that section 127 is a fetter upon the power of eminent domain. By enacting section 127 the legislature has struck a balance between the competing claims of the interests of the general public and the rights of the individual. The Supreme Court held that the statutory power created by section 127 providing that the reservation of the land under the Development Plan shall lapse, if no steps are taken for acquisition of land within six months from the date of service of a purchase notice is an integral part of the machinery created by which the acquisition of land takes place. The word "aforesaid" in the collocation of words "no steps as aforesaid are commenced for acquisition" refers to the steps contemplated by section 126(1) for the acquisition of the land.

15. In the present case a notice u/s 127 was served on behalf of the petitioner upon the first respondent on 12th June, 2000. On behalf of the first respondent, it was sought to be asserted that in the present case, the "appropriate authority" for the purposes of the acquisition was the third respondent and it was for the

third respondent to take steps for the acquisition. A reference to this contention is found in the letter dated 7th July, 2000 addressed by the first respondent. The third respondent also by its letter dated 30th November, 2000 to the Collector adopted the same view in regard to the alleged illegality of the notice, contending that the notice was vitiated since it had not been served upon the acquiring authority. This submission has been urged both in the affidavit which has been filed on behalf of the third respondent as well as during the course of the hearing before this Court by the learned Counsel. The notice which was issued u/s 127 is consequently sought to be impugned on the ground that it was the third respondent which was the appropriate authority and that the notice was not served on the third respondent.

16. The provisions of section 127 are attracted where land that is reserved, allotted or designated for any purpose specified in any plan under the Act is neither acquired by agreement within 10 years of the date on which the final regional plan or final Development Plan comes into force or if proceedings for the acquisition of the land under the Act or the Land Acquisition Act, 1894 are not commenced within the period. The owner or the person interested in the land is then empowered to submit a notice to the planning authority, development authority or as the case may be, the appropriate authority to that effect. If within six months from the date of service of notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed. The land shall thereupon be deemed to have been released from such reservation, allotment or designation. The consequence is that the land becomes available for the owner for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan.

17. The expression "planning authority" is defined by Clause 19 of section 2 to mean a local authority and to include special planning authority constituted u/s 40 or the Slum Rehabilitation Authority. The expression "local authority" is defined by Clause 15 of section 2. There can be no dispute about the position that the third respondent is not the planning authority. Similarly, the third respondent cannot be regarded as the development authority since that expression in Clause 8 means a New Town Development Authority constituted or declared u/s 113. But according to the third respondent, it is an appropriate authority within the meaning of sub-section (3) of section 2. That expression means "any public authority on whose behalf land is designated for a public purpose in any plan or scheme and which it is authorised to acquire". The expression "public authority" in the absence of a definition provided by the statute must receive its ordinary meaning and if that meaning is ascribed to the term, it would be clear that the third respondent is not a public authority. Moreover, the acquiring body in the present case is the Municipal Council, the first respondent, though the benefit of the reservation is for the third respondent. The submission sought to be advanced on behalf of the third respondent that the notice u/s 127 was vitiated because it was issued to the first respondent is thus

completely unfounded. The petitioner served a notice upon the first respondent which is the "planning authority" since that expression means a "local authority" and the local authority includes a Municipal Council constituted under the Maharashtra Municipalities and Nagar Panchayats and Industrial Township Act, 1965. The notice was thus, correctly served upon the first respondent and there is absolutely no basis in the submission that it ought to have been served on the third respondent for the reason that the third respondent was an appropriate authority. In the affidavit in reply which has been filed on behalf of the third respondent, it has been repeatedly sought to be asserted that the third respondent is an "appropriate authority" and, therefore, it was incumbent upon the petitioner to serve the notice on the third respondent. The third respondent submits in para 4(d) of its affidavit that there was no question of the lapsing of the reservation, even assuming that the purchase notice was valid, since the third respondent as the appropriate authority applied to the Collector by its letter dated 13th November 2000 to acquire the land for the third respondent. Again there is no basis in this contention since the steps for the commencement of acquisition which are referred to in section 127 must be those which have to be taken under sub-section (1) of section 126. Under sub-section (1) of section 126, the planning authority, development authority or appropriate authority has to make an application to the State Government for acquiring the land under the Land Acquisition Act, 1894. In these circumstances the defence on the part of the third respondent to the purchase notice on the ground that the third respondent is the appropriate authority must fail.

18. It was then sought to be submitted that the land had been originally reserved in the final Development Plan sanctioned on 1st February 1978 for the purposes of the extension of the Dr. B.N. Purandare College. Sometime in 1987, as a result of the modification u/s 37, the land came to be reserved for the third respondent. In 1988 the revised Draft Development Plan was published in which the reservation continued. Mr. Singhvi, the learned Senior Counsel appearing on behalf of the petitioner submits that a lapsing of the reservation in the Development Plan would obliterate or efface the reservation from the revised Draft Development Plan published in 1988. On the other hand, it was urged on behalf of the respondents that it would be perfectly open to the competent authority to continue the reservation in the Draft Revised Development Plan and that once the Draft Revised Development Plan was published, there was no question of the reservation lapsing u/s 127 of the Act with reference to the reservation in that plan.

19. In considering these submissions, it would be necessary to advert to some of the relevant provisions of the Act. u/s 21 as soon as may be, after the commencement of the Act, but not later than three years thereafter, every planning authority is mandated to carry out a survey, to prepare an existing land-use-map and prepare a Draft Development Plan for the area within its jurisdiction. The contents of the Development Plan are provided for in section 22 of the Act and these have been noticed earlier. u/s 23, the planning authority is

to make a declaration of its intention to prepare a Development Plan showing the boundary of the area proposed to be included therein. The planning authority has to invite suggestions or objections from the public. Section 26 of the Act deals with the preparation and publication of the notice of the Draft Development Plan. The planning authority has to prepare a Draft Development Plan and publish a notice in the Official Gazette not later than two years from the date of the notice published u/s 23 stating that the Development Plan has been prepared. The Development Plan is then open to suggestions and objections from the public. Where the area within the jurisdiction of the planning authority is included in a region, section 27 requires that the planning authority shall have regard to and be guided by the proposals made in any draft regional plan or final regional plan while preparing the Draft Development Plan. u/s 28, the planning authority or its Designated Officer is required to consider suggestions and objections relating to the Draft Development Plan made before it after duly considering the report of the Planning Committee constituted under sub-section (2) and the suggestions or objections which are received. The planning authority upon receipt of the report by the planning committee is to consider whether any modifications or changes in the Draft Development Plan should thereafter be made. If any of those modifications is of a substantial nature, section 29 requires the authorities to once again publish a notice inviting suggestions and objections u/s 29. Section 22-A now defines what is meant by the expression modification "of substantial nature" in sections 29 and 31. u/s 30 thereafter, the planning authority has to submit the Draft Development Plan to the State Government for sanction. Section 31 speaks of the sanction of the State Government to the Development Plan either with or without modification. Once again, if the modifications, which the Government proposes are substantial, it has to invite suggestions and objections from the public. Sub-section (6) of section 31 provides that the Development Plan which has come into operation shall be called a final Development Plan and shall be binding on the planning authority subject to the provisions of the Act. Section 37 provides for the procedure to be followed for a modification of the final Development Plan in a manner that does not change the character of the plan. Section 38 deals with revision of the Development Plan and requires that atleast once in a 20 years from the date on which a Development Plan has come into operation, a planning authority may and when so directed by the State Government shall revise the Development Plan and the provisions of sections 22 to 31 shall apply in respect of such revision. Section 42 mandates that on the coming into operation of any plan or plans referred to in the chapter, it shall be the duty of every planning authority to take such steps as may be necessary to carry out the provisions of such plan or plans.

20. u/s 43, no person can institute or change the use of land or carry out development of land without the written permission of the planning authority, after the date on which a declaration of the intention to prepare a Development Plan is published in the Official Gazette. Section 44 provides for an application for permission to develop land, and section 45 for the grant or refusal of the

permission by the planning authority. Section 46 of the Act expressly provides that the planning authority in considering an application for such permission shall have due regard to the provisions of any draft or final plan or proposals published by means of a notice submitted or sanctioned under the Act. Finally, regard must be had to section 49 of the Act, sub-sections (1), (3), (4), (5) and (7) of which are material and provides as follows :---

"49. Obligation to acquire land on refusal of permission or on grant of permission in certain cases.---(1) Where---

(a) any land is designated by a plan as subject to compulsory acquisition, or

(b) any land is allotted by a plan for the purpose of any functions of a Government or local authority or statutory body, or is land designated in such plan as a site proposed to be developed for the purposes of any functions of any such Government, authority or body, or

(c) any land is indicated in any plan as land on which a highway is proposed to be constructed or included, or

(d) any land for the development of which permission is refused or is granted subject to conditions,

and any owner of land referred to in Clause (a), (b), (c) or (d) claims

(i) that the land has become incapable of reasonably beneficial use in its existing state, or

(ii) where planning permission is given subject to conditions that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions; or

(e) the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it except at a lower price than that at which he might reasonably have been expected to sell if it were not so designated or allocated,

the owner or person affected may serve on the State Government within such time and in such manner, as is prescribed by regulations, a notice (hereinafter referred to as "the purchase notice") requiring the appropriate authority to purchase the interest in the land in accordance with the provisions of this Act.

(2)

(3) On receipt of a purchase notice, the State Government shall forthwith call from the Planning Authority and the Appropriate Authority such report or records or both, as may be necessary, which those authorities shall forward to the State Government as soon as possible but not later than thirty days from the date of their requisition.

(4) On receiving such records or reports, if the State Government is satisfied that

the conditions specified in sub-section (1) are fulfilled, and that the order or decision for permission was not duly made on the ground that the applicant did not comply with any of the provisions of this Act or Rules or Regulations, it may confirm the purchase notice, or direct that planning permission be granted without condition or subject to such conditions as will make the land capable of reasonably beneficial use. In any other case, it may refuse to confirm the purchase notice, but in that case, it shall give the applicant a reasonable opportunity of being heard.

(5) If within a period of six months from the date on which a purchase notice is served the State Government does not pass any final order thereon, the notice shall be deemed to have been confirmed at the expiration of that period.

((6) *****))

(7) If within one year from the date of confirmation of the notice, the appropriate authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required u/s 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed and thereupon, the land shall be deemed to be related from the reservation, designation or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan."

21. A comparison of the provisions contained in section 49 with those of section 127 would be material for the purposes of the present case. Section 127 deals with a specific situation—one in which land which has been reserved, allotted or designated for any purpose specified in the plan under the Act is not acquired by agreement within ten years of the date on which the final Regional plan or final Development Plan came into force or if proceedings for acquisition of the land are not commenced under the Land Acquisition Act of 1894 within ten years. The provisions of section 127 are thus attracted in a situation where despite the existence of a reservation, designation or allotment, the land is not acquired within a period of ten years either by agreement or under the Act of 1894. Section 127, therefore, does not come into operation until a period of ten years has elapsed from the date on which the final Regional Plan or final Development Plan has come into force and it is only thereafter, that the owner or any person interested in the land is empowered to serve a notice on the planning authority, Development Authority or Appropriate Authority as the case may be. Upon the service of a notice under the section upon one of the authorities mentioned therein, the land is to be either acquired or if not acquired at least steps for the acquisition of the land have to be commenced within a period of six months from the service of the notice. If that is not done, the section provides that "the reservation, allotment or designation shall be deemed to have lapsed". The reservation, allotment or designation which is deemed to have lapsed is specifically that contained in the final Regional Plan or the Final Development

Plan, as the case may be. Upon the lapsing of the reservation, it is from "such reservation, allotment or designation" that the land is deemed to be released. The land is then, available to the owner for the purposes of development as otherwise permissible in the case of adjacent land under the relevant plan. The scheme statutorily enacted in section 127 of the Act thus demonstrates that this statutory provision relates to a contingency where the land is not acquired either by statutory prescription or by agreement within a period of ten years of the enforcement of the final regional plan or the final Development Plan. The consequence which the statute provides for the failure of the authority to acquire the land or to take steps for its acquisition upon the service of a notice, within the prescribed period, is with reference to the lapsing of the reservation, allotment or designation in the final plan.

22. Section 127, it would be necessary to emphasise, does not deal with the revision of a Development Plan, nor for that matter, does the section curtail or affect the right of the Planning Authority to proceed to revise the Development Plan. The Planning Authority is to revise the Development Plan twenty years after it has come into operation (the period was 10 years prior to Amending Act 39 of 1994). This Court, as would be noticed shortly hereafter, has held that the lapsing of a reservation has to be distinguished from the lapsing of the public purpose. The lapsing of a reservation in respect of a final Development Plan u/s 127 cannot preclude the authorities from determining, while the plan is revised in pursuance of the independent statutory power conferred by section 38 as to whether the public purpose continues to subsist or whether the land ought to be reserved in the revised plan for the same or any other public purpose. Now it is true that the underlying object of section 127 of the Act is to balance the public interest in planned Urban Development, with the right of the owner to develop the land. One aspect of the former is the reservation of the land in the draft or final plan for specified public purposes as set out in section 22. Equally, since the reservation of land creates a fetter on the owner to beneficially enjoy and use the land, the authority must, in the process of revision, duly apply its mind to the question as to whether the lands are truly and genuinely required for the purpose for which the reservation is proposed. The continuance of reservation cannot be an idle formality and an owner of land cannot be precluded indefinitely from being prevented from developing the land in accordance with law. Therefore, while section 127 does not exclude the exercise of the statutory power of the Planning Authority to impose a reservation in the revised Development Plan, that power has to be exercised in order to achieve the underlying object of the statutory provision and not as a matter of routine course unless the authority is satisfied that a public purpose continues to subsist.

23. A judgment of a Division Bench of this Court consisting of M.L. Pendse, J. (as the learned Chief Justice then was) was S.M. Jhunjhunwala, J., in *Robert Joseph Castellino v. State of Maharashtra*, Writ Petition No. 3664 of 1989, decided on 15th September, 1994, throws light on the issue which arises in the present case. In the said case, in a Development Plan which was published on 6th

August, 1966, certain lands situated at Andheri (East) were reserved for a recreation ground. On 21st March, 1988, the owners and developers served a notice on the Municipal Corporation u/s 127 and having received no reply thereto, contended by a letter dated 20th December 1988 that the reservation had lapsed. The Corporation thereafter, claimed that it had passed a resolution on 13th September, 1988 recommending the acquisition of the lands and it was forwarded to the Collector on 16th September 1988. In the meantime, on 30th April 1988 a fresh draft Development Plan was published inviting objections and in the said plan also the lands were reserved for the same public purpose viz., for a recreation ground. Subsequently, on 26th August, 1994 a notification u/s 6 of the Land Acquisition Act, 1894 as required under sub-section (2) of section 126 of the M.R.T.P. Act, 1966 was published. The Division Bench of this Court held that while the Municipal Corporation had taken steps for the acquisition of the land within a period of six months of the service of the notice u/s 127, it was not open to the State Government to wait for a period of 6 years thereafter to issue a notification u/s 6 of the Land Acquisition Act, 1894. The explanation which has been offered by the Special Land Acquisition Officer for the delay was held to be entirely unsatisfactory. The Division Bench then held that in the circumstances the petitioner would be entitled to a relief of the declaration that the Reservation had lapsed but for what had transpired during the pendency of the petition. That circumstance was that on 30th April 1988, which was a month after the notice was served u/s 127 of the Act, the Draft Development Plan was published in which the lands were again shown to be reserved for a public purpose. The petitioners before the Court sought the deletion of the land from reservation, but their claim was not accepted and the final Development plan was sanctioned on 12th November 1992. The submission which was urged on behalf of the State was that notification u/s 6 of the Land Acquisition Act, 1894 was in pursuance of the final Development Plan which was sanctioned. This Court accepted the aforesaid contention and, while dealing with the objection of the petitioner that the fresh reservation in the revised Development Plan was mala fide, the Court held as follows :

"It was urged that the lands were reserved for a public purpose with effect from year 1966 and no steps were taken to acquire the same and it would be unjust and unfair to the petitioners that the Government should be permitted to acquire the lands in year 1994. The contention that the respondents are acting mala fide cannot be accepted, even assuming that the reservation under 1966 development plan had lapsed because of failure of the respondents to take requisite steps after service of purchase notice u/s 127 of the Act, still that cannot lead to the conclusion that the public purpose for which the lands were designated had come to an end. The provisions of section 127 prescribed that the reservation would lapse but lapsing of the reservation is not equivalent to the lapsing of the public purpose. It is always open for the planning authority to reserve the land in respect of which the reservation had lapsed for a public purpose in the next development plan."

These observations are in our respectful view apposite to the situation in the present case and with respect, we concur with the proposition of law which has been enunciated in the judgment of the Division Bench of this Court. As already noticed earlier, section 127 deals with a specified contingency viz., one where the lands which have been reserved have not been acquired within a period of 10 years of the enforcement of the final Development Plan or the final Regional Plan, as the case may be. The provisions of the section have to harmoniously construed with the other provisions of the Act. Section 127 does not impose a fetter on the duty of the public authority to revise the Development Plan and if it is found so necessary to impose a fresh reservation or to continue the existing reservation if public interest so warrants. This interpretation is consistent with the language of section 127, finds support in the judgment of the Division Bench and would obviate a serious prejudice to public interest if the Court were to come to the conclusion that the lapsing of the reservation in the Development Plan would lead to the consequence that the land in respect of which a reservation had lapsed is irretrievably lost for the public purpose for which a reservation is considered necessary in the interests of the public.

24. Unlike section 127, section 49 of the Act is not prefaced by the requirement that the land which is the subject matter of reservation, allotment or designation for any purpose has not been acquired within a period of ten years from the date on which the final Regional or Development Plan as the case may be, has come into force. The implementation of a final Regional or Development Plan and the lapse of a period of ten years from its enforcement is not a condition incorporated for the applicability of section 49. Section 49 empowers the owner or person affected to serve on the State Government a notice requiring the appropriate authority to purchase his interest in the land in accordance with the provisions of the Act in certain specified contingencies. These specified contingencies are provided for in sub-section (1) of section 49 and amongst them are two which should be material for the present purposes. Clause (a) of sub-section (1) of section 49 deals with a situation where land is designated by a plan as subject to compulsory acquisition. Clause (d) deals with a situation where permission for the development of land is refused or is granted subject to conditions. u/s 46, a Planning Authority while considering an application for permission to develop land has to have regard to the provision of any draft or final plan or proposals. If the Planning authority refuses, as in the present case, development permission on the ground that the land is reserved in the draft revised development plan for a public purpose, the provisions of section 49 are attracted. Where the owner claims that the land has become incapable of reasonably beneficial use in its existing state or that it cannot be rendered capable of reasonably beneficial use as a result of the conditions imposed for development or where the owner of the land claims that because of the designation or allocation of the land in any plan, he is unable to sell it except at a price lower than that at which he might reasonably have been expected to sell the land he is empowered to issue a notice of purchase to the State Government.

The State Government on receipt of the purchase notice has to call for the report of the planning authority and the appropriate authority. The State Government may thereafter, confirm the purchase notice or refuse to do so or, as the case may be, direct that development permission be granted with or without conditions. Sub-section (5) of section 49 provides that the purchase notice shall be deemed to have been confirmed if the State Government does not pass any final order thereon within six months of the service of the notice. Similarly under sub-section (7) the reservation is deemed to lapse if within one year from the date of confirmation of the notice the appropriate authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required u/s 126. The power of the land owner to issue a notice of purchase u/s 49 is conditioned by the provisions of sub-section (1) to the section. Therefore, even if the reservation cannot lapse in a given case because the requirements of section 127 are not satisfied or met, the land owner still has the option of moving the State Government u/s 49 on the ground that the requirements of section 49 have been duly fulfilled. Where the land is designated in a plan as subject to compulsory acquisition or where the development permission has been refused as in the present case, it is well open to the land owner to apply to the State Government for a direction to the appropriate authority to purchase it in accordance with the provisions of the Act. The land owner to whom the remedy u/s 127 is not available in a case such as the present, as a result of the reservation of the land in the revised Draft Development Plan, still has the remedy of moving the State Government u/s 49 of the Act. The State Government would necessarily have regard to all the relevant facts and circumstances including the report of the planning authority. The State Government must also keep in the balance the need of the land owner to develop the land and of not subjecting him to an indefinite fetter upon the beneficial use and enjoyment of his property.

25. In the present case, a period of ten years had elapsed after the final development plan was published on 1st February 1978. In the Draft Revised Plan of 1988 thereafter the reservation of the land for the purpose of the College of the Third respondent continued to subsist. The issuance of the notice u/s 127 will not have the effect of obliterating the reservation of the land under the revised draft development plan. The remedy of the petitioner would be to move to the State Government u/s 49 of the Act which it is open for the petitioner to do. The petitioner, it must be noted, has relied upon a judgment of a Division Bench of this Court rendered on 20th October 1991 in *Mohamed Ibrahim Ejaz & another v. State of Maharashtra & another*, Writ Petition No. 273 of 1983. That case also involved the same reservation as was so originally in the present case for the extension of the Dr. B.N. Purandare College and the Survey numbers in question were Survey No. 80 Hissa Nos. 1, 2 and 3 and Survey No. 81. The land owner had issued a purchase notice under sub-section (1) of section 49 on 7th July, 1980. No steps were taken within the stipulated period after which on 18th December 1982, the Government confirmed the purchase notice. Relying on the

provisions of sub-section (5) of section 49, this Court held that the notice shall be deemed to have been confirmed at the expiration of a period of six months and if within one year from that date no action had been adopted by the Municipal Council for commencing acquisition proceedings, the reservation would lapse. The petitioner relies upon the judgment of the Division Bench a copy whereof is annexed to the petition. The petitioner has however, not followed the remedy u/s 49 and has instead taken recourse to section 127 which for the reasons already noted will not assist him.

In the facts and circumstances of the present case, therefore, we are of the view that the petitioner is not entitled to a declaration, as prayed for, that the reservation in respect of his land in the Development Plan has lapsed; that the reservation in favour of the third respondent was illegal and that the petitioner is entitled to carry on construction on the land. We leave it open to the petitioner to pursue the remedy u/s 49 of the Act and in the event of a notice under the aforesaid provision being issued by the petitioner, the State Government shall deal with it appropriately having regard to the provisions of the Act and what has been set out by us earlier. The learned Counsel appearing on behalf of the petitioner has submitted that in response to a communication dated 3rd July, 2001 of the Chief Officer of the first respondent, the third respondent has signified by a letter dated 7th July, 2001 that it does not possess the funds requisite for the acquisition of the land. If this is so, an early resolution of the question as to whether the land is at all required to be kept under reservation is called for. The Municipal Council which is the Planning Authority as well as the third respondent have avoided the responsibility of taking a considered decision of the question as to whether the land is required to implement the reservation, on the specious plea that the third respondent is the "appropriate authority". The Special Land Acquisition Officer had as far back as on 27th June, 1990 and on 26th September, 1995 addressed communications to the third respondent setting out certain requisitions. The third respondent claims that it was in correspondence with the authorities of the Education Department. Be that as it may, we are of the view that the first respondent must expeditiously determine whether the reservation is now necessary and whether the first respondent is in fact in a position, whether by itself or together with the third respondent, to implement the reservation by financing the cost of the acquisition of the land. The first respondent shall make this determination within a period of three months from today and will take necessary steps in accordance with law if it arrives at a decision that the reservation should not be continued. We also leave it open to the petitioner to take steps u/s 49 of this Act, if he is so advised. In the event of a notice being given u/s 49 the State Government, would have regard to all relevant facts and circumstances and arrive at a considered decision. Subject to the aforesaid direction to the first respondent and while leaving it open to the petitioner to take recourse to the remedy u/s 49 or under any other provisions of law, we decline to grant relief in the terms as prayed for.

26. The writ petition is disposed of in the aforesaid terms, in the circumstances

with no order as to costs.