

(2022) 07 BOM CK 0064
In the Bombay High Court
Case No : Writ Petition No. 2231 Of 2019

Shree Vinayak Builders & Developers

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 25-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 300A
Maharashtra Regional And Town Planning Act, 1966 — Section 49, 113A, 125, 126, 126(1), 126(c), 126(1)(a), 126(1)(b), 126(1)(c), 126(2), 126(4), 127, 127(1)
Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 — Section 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19
Maharashtra Regional And Town Planning (Second Amendment) Act, 1972 — Section 40(1)
Limitation Act, 1963 — Section 4, 5A, 6
Indian Contract Act, 1872 — Section 2(a), 2(b), 2(e), 2(h), 7, 8, 9, 10
Land Acquisition Act, 1894 — Section 6

Citation : (2022) 07 BOM CK 0064

Hon'ble Judges : Sunil B. Shukre, J; Anuja Prabhudessa, J; Anil L. Pansare, J

Bench : Full Bench

Advocate : V.G, N.A.Palshikar, Ketki Joshi, S.M.Puranik, A.R.Syed

Judgement

1. This Bench has been constituted pursuant to an order dated 27th January, 2022 by a Division Bench of this Court, comprising of Hon'ble Mr. Justice Sunil B. Shukre and Anil D. Kilor, JJ. The Division Bench expressed disagreement with view taken by another Division Bench of this Court in the case of Asha Sunil Zawar vs. State of Maharashtra & Ors. (W.P. No.5938 of 2020). The Division Bench has referred the following questions for opinion of this Larger Bench:

(i) Whether the modes of acquisition provided under Section 126(1)(a) and (b) of the Maharashtra Regional and Town Planning Act, 1966 are at the choice of either of the parties or only of the acquiring authority?

(ii) If the planning authority has approved the request of the land owner for grant of monetary compensation or grant of TDR/FSI in lieu of compensation, can the land owner withdraw his request and thereby refuse or decline to

surrender the land?

(iii) Can the grant of approval or passing of resolution by the authorities concerned for grant of TDR in lieu of monetary compensation be treated as a step for acquisition of land and thereby commencing the proceedings for acquisition of the land?

2. In a petition relating to declaration of lapsing of reservation by operation of Section 127 of MRTP Act, 1966, the Division Bench in the referring order has observed that the two modes of acquisition under Section 126(1) viz. (a) By agreement by paying an amount agreed to (b) Grant of TDR/FSI in lieu of compensation, depend on the agreement between the parties where consent of the land owner is equally important, rather is a pre-condition. The Division Bench has disagreed with the view expressed in *Asha Sunil Zawar (supra)* that the option regarding the manner in which reserved land should be acquired, can be exercised only at the discretion of the Acquiring Authority, and not at the discretion of the land owner.

3. The Division Bench disagreed with the view in *Asha Sunil Zawar (supra)* that the option of TDR does not rest with the land owner and that if he fails to approach the Planning Authority for TDR, the land owner cannot insist for acquisition of land under clause (c) of Section 126 and further that offering compensation of TDR within twenty four months from the date of purchase notice is a step towards commencing the acquisition. The Division Bench opined that mere acceptance of the application for TDR by the concerned Authority cannot be termed as a step towards acquisition in the absence of concrete and irreversible step towards acquisition without any other possibility. The Division Bench noted that the view expressed by the Division Bench in *Madhukar S/o Haribhau Muley vs. The State of Maharashtra and Ors.*, (Writ Petition No.10162 of 2019), *Shri Vasant Mahadeo Patil and others vs. The State of Maharashtra and others* 2018 SCC OnLine Bom.2620, *Keshaorao Narayan Chichghare vs. The State of Maharashtra & others* (Writ Petition No.1343 of 2017) and *The Nirmal Ujwal Credit Co-operative Society (Limited Nagpur) vs. The State of Maharashtra & Anr.* (Writ Petition No.728 of 2017) has not been considered or discussed in the case of *Asha Sunil Zawar (supra)*. As a result of difference of opinion, the Court formulated the questions referred to in the reference order.

4. We have heard Shri Palshikar, learned counsel for the petitioner, Smt, Ketki Joshi, learned Government Pleader for the State - respondent no.1 and Shri S.M.Puranik, learned counsel for respondent nos.2 and 3. We have also heard Shri A.R.Syed, learned counsel from Aurangabad, who was permitted by this Court to make his submissions in the matter with a view to assist the Court in its endeavour to answer the questions under reference.

5. Shri Palshikar submits that the essential element of acquisition modes under clauses (a) and (b) of sub-section (1) of Section 126 of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act" for short) is of choice of either of the

parties; the agreement between the parties; the consensus arrived at between the parties, and, therefore, there can be no unilateral imposition of will of the acquiring authority in the matter of acquisition of land under any of these clauses.

6. He further submits that a careful perusal of clause (a) of Section 126 (1) shows that it has two ingredients, the ingredients of offer of amount and acceptance of the offer which must be fulfilled before there is a conclusion of contract between the land owner and the acquisition authority. He further submits that similar is the position about clause (b) of Section 126 (1), which requires that there should be offer of Floor Space Index (for short "FSI") or Transferable Development Rights for short "TDR") and surrender of the land. According to him, unless these two requisites of clause (a) or clause (b), as the case may be, of Section 126 (1) are fulfilled, there can be no concluded contract obtaining between the parties and, therefore, a land owner can always withdraw his application for acquisition of land by payment of agreed amount or grant of FSI or TDR before the conclusion of contract occurs.

7. He further submits that in case of acquisition mode under clause (b) of Section 126 (1), it is necessary to understand as to when there happens commencement of proceeding for acquisition of land as it has a bearing upon the ability of the land owner or the lessee, as the case may be, to withdraw his application seeking grant of FSI or TDR. He submits that if there is no concluded contract between the parties, there would not be any commencement of the proceeding for acquisition of land and that means, the land owner or lessee, as the case, may be would have freedom to withdraw his application for grant of FSI or TDR any time before parties conclude the contract. According to him, in case of land acquisition mode (b) of Section 126 (1), the contract is concluded only when there is surrender of land as contemplated under this clause, as it is something which must necessarily culminate into the acquisition of land with its further necessary consequences.

8. Smt. Ketki Joshi, learned Government Pleader has reiterated to a large extent the submissions on law points made by Shri Palshikar. She, too, is of the opinion that agreement is of the essence of land acquisition modes prescribed under clauses (a) and (b) of Section 126 (1) of the MRTP Act and, therefore, they are at the choice of either of the parties and not just one single party. But, in her opinion, once the application made by the land owner or lessee for grant of FSI or TDR is approved or there is an offer of FSI or TDR and its acceptance by the land owner or lessee, it amounts to conclusion of contract between the parties and, therefore, there is no going back by any of the parties from the contract so concluded between them. She also submits that the MRTP Act primarily deals with planning and for it acquisition of land is only incidental and, therefore, any provision of the MRTP Act must be interpreted in a manner as to be consistent with its object.

9. Shri Puranik, learned counsel completely disagreeing with the submissions of the learned counsel for the petitioner and submits that even though land

acquisition modes provided under clauses (a) and (b) of Section 126 (1) of the MRTTP Act are based upon the agreement between the parties, no party thereto, especially land owner or lessee, can be permitted to approbate and reprobate. He submits that once a party accepts the offer of money, the contract is concluded and the land acquisition will take place in terms of clause (a) of Section 126 (1). He further submits that when an application made by a land owner for grant of FSI or TDR is approved or accepted by the acquiring authority, and such approval or acceptance is duly communicated to the land owner or lessee, the contract is complete and gets concluded. Thereafter, he further submits, a party cannot be permitted to withdraw his request and thereby refuse or decline to surrender the land. He submits that the intention of the Legislature is to provide for just and fair compensation to the land owner and the concept of just and fair compensation has to be understood from the view point of both parties to the transaction, the land owner and the acquiring authority. If this were not so, he further submits, the acquiring authority would invariably end up in paying unreasonably more compensation defeating the objects of acquisition of land by agreement under clauses (a) and (b) of Section 126 (1) of the MRTTP Act. He points out the objects of these modes of acquisition are of speed, economy and satisfaction for both the parties.

10. Shri Puranik, learned counsel for respondent nos.2 and 3 further submits that in case of acquisition of land by grant of FSI or TDR, the contract between the parties is concluded the moment the application of the land owner or lessee, as the case may be, for grant of FSI or TDR, is approved or accepted by the acquiring authority and surrender of land by the land owner or lessee, as the case may be, is only a formality which must be completed by the land owner or lessee. He submits that this is because of the fact that a contract is concluded when there is an offer and its acceptance. He submits that an application made by the land owner or lessee for grant of FSI or TDR has to be considered as an offer made by the land owner or lessee and its approval or acceptance made by the acquiring authority has to be considered as acceptance of the offer, which then would conclude the contract, making it to be a step of commencement of proceeding for acquisition of land from where there cannot be any withdrawal of application for grant of FSI or TDR made by the land owner or the lessee.

11. Shri A.R. Syed, learned counsel has argued on similar lines as Shri Palshikar, learned counsel for the petitioner and, therefore, his submissions are not reproduced here.

12. Before we proceed to consider the submissions of learned counsel and learned Government Pleader for respective parties and Shri A.R. Syed, learned Advocate, we must note provisions under Sections 125, 126 and 127 of the MRTTP Act.

"Section 125. Compulsory acquisition of land needed for purposes of Regional Plan, Development plan or town planning 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 [These words and figures were substituted for the words and figures "within the meaning of the Land Acquisition Act, 1894", by Mah.42 of 2015, s.5(i), (w.e.f.29-8-2015).] [within the meaning of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013].

[Proviso was added by Mah. 42 of 2015, s. 5(ii), (w.e.f.29-8-2015).] Provided that, the procedure specified in section 4 to 15 (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.

Section 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, [This portion was substituted for the words "any Appropriate Authority may acquire the land" by Mah.21 of 1971, s.11(1).] [any Appropriate Authority may, except as otherwise provided in section 113A] [This portion was substituted for the words and figures "acquire the land either by agreement or makes an application to the State Government for acquiring such land under the Land Acquisitions Act, 1894" by Mah.10 of 1994, s.13(a), (w.e.f.25.3.1991)] [acquire the land,-

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

(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned [These words and figures were substituted for the words and figures "on the basis of the principles laid down in the Land Acquisition Act, 1894", by Mah.42 of 2015, s.6(i) (a), (w.e.f.29.8.2015).] [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 in application to the State Government for acquiring such land [These words and figures were substituted for the words and figures "under the Land Acquisition Act, 1894", by Mah.42 of 2015, s.6(i)(b), (w.e.f.29.8.2015).]

[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 [These words and figures were substituted for the words and figures "or under the Land Acquiring Act, 1894" by Mah.42 of 2015, s.6(i)(c), (w.e.f.29-8-2015).] [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 [These words were substituted for the words "if the State Government itself is of opinion" by Mah.14 of 1971, s.6(1)(a).] [if the State Government (except in cases falling under section 49 [This portion was inserted by Mah.21 of 1971, s.11(2).] [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, [These words and figures were substituted for the words and figures "in the manner provided in section 6 of the Land Acquisition Act, 1894", by Mah.42 of 2015, s.6(ii), (w.e.f.29-8-2015)] [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:

[This proviso was substituted by Mah. 10 of 1994, s.13(b).] [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.]

[Sub-section (3) was substituted by Mah.11 of 1973, s.6.] [(3) On publication of a declaration under the said [This word and figure were substituted for the word and figure "section 6", by Mah. 42 of 2105, s.6(iii), (w.e.f.29-8-2015).] [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 or publication of the draft town planning scheme:

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

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

[Sub-section (4) was added by Mah. 14 of 1971, s.6(3).][(4) [These words were substituted for the words "if a declaration" by Mah.10 of 1994, s.13(c)(i).] [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 [These brackets, words and figures were substituted for the brackets, words and figures "(Amendment) Act, 1970", by Mah. 10 of 1994, s.13(c)(ii).] [(Amendment) Act, 1993], the State Government may make a fresh declaration for acquiring the land [These words and figures were substituted for the words and figures "under the Land Acquisition Act, 1894", by Mah. 42 of 2015, s.6(iv), (w.e.f. 29-8-2015).] [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.]

Section 127. Lapsing of reservations

[Re-numbered by Mah. 16 of 2009, s.2.] [(1)] If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional plan, or final Development plan comes into force [This portion was substituted by Mah. 16 of 2009, s.2(a).] [or if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within [These words were substituted for the words "twelve months", by Mah.42 of 2015, s.7, (w.e.f.29-8-2015).] [twenty-four 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.

[Sub-section (2) was added by Mah.16 of 2009, s.2(b).] [(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.]”

13. Section 125 of the MRTP Act provides that when any land is required, reserved or designated in a Regional Plan, Development Plan or a Town Planning Scheme, etc. for a public purpose under the MRTP Act, then the said land shall be deemed to be the land needed for a public purpose within the meaning of Land Acquisition Act, 1894 which is now substituted by Maharashtra Act 42 of 2015 as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 w.e.f. 29.8.2015.

14. Section 126(1) of the MRTP Act provides that after the publication of draft Regional Plan or any other plan or Town Planning Scheme, the Planning Authority, Development Authority or the Appropriate Authority may acquire the land required or reserved for public purpose. Section 126(1) postulates three modes of acquisition viz. a) by agreement by paying an amount agreed to; (b) in lieu of any such amount, by granting FSI or TDR to the land owner or the lessee, against the area of land surrendered free of cost and free from all encumbrances and further additional FSI or TDR against the development or construction of the amenity on the surrendered land at his cost; (c) by making an application to the State Government to acquire the land under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, in short 2013 Act.

15. Section 126 (1) (a) and (b), entitles the owner or lessee of a plot of land reserved for public purpose in the Development Plan to the award of an amount agreed to or in lieu of any such amount TDR or FSI upon surrender of the land free of cost and free from encumbrances. Learned counsel for the Petitioner has referred to paragraphs 11 and 12 in the case of Pune Municipal Corporation and Anr. vs. Kausarbaugh Co-op. Housing Society Ltd. And Anr. 2015 AIR SCW 2230 wherein the Hon’ble Supreme Court has held thus:-

11. The concept of TDR was introduced for the first time in the MRTP Act in the year 1993 by an amendment of Section 126(1)(a),(b) and (c) of the MRTP Act. The modalities for grant of TDR were brought into force by the amended Development Control Regulation (for short ‘DCR’) N-2.4 with effect from 5.6.1997. In its simplest form, the concept of TDR involves the surrender of land reserved for various public purposes in the development plan free of cost and in exchange thereof grant of TDR entitling the holder thereof to construct a built up area equivalent to the permissible FSI of the land handed over by him on one or

more plots in the zone specified. Such rights are transferable. The object behind introduction of TDR, as admitted by the Pune Municipal Corporation in its various publications, was to meet the situation faced by the Corporation on being called upon to make payment of over Rs.1500 crores to take over different sites measuring about 600 hectares which had been reserved for different public purposes in the development plan.

12. Strictly construed it is the provisions of the Section 126(1)(a) read with (b) of the MRTP Act, extracted earlier, which contemplate grant of TDR and that too only against land acquired by agreement as distinguished from land which is acquired under the Land Acquisition Act in exercise of powers under Section 126(1)(c). The latter kind of acquisition i.e. under the Land Acquisition Act by invoking Section 126(1)(c) of the MRTP Act however stands on a footing that is different and distinguishable from the normal process of acquisition under the same Act i.e. the Land Acquisition Act. This is because in an acquisition under the Land Acquisition Act made in exercise of power under section 126(1)(c) of the MRTP Act, the provisions of Section 4 and Section 5A of the L.A. Act are dispensed with and straightway a notification under Section 6 is to be issued. The market value of the land, though sought to be acquired under the Land Acquisition Act, is pegged to the date of publication of the interim or draft development plan, as may be, and not to the date of publication of the notification under Section 4 of the Land Acquisition Act. The above is a subtle but vital difference between the ordinary and 'normal' process of acquisition under the Land Acquisition Act and the process of acquisition under the same Act but in exercise of powers under Section 126(1)(c) of the MRTP Act that needs to be kept in mind."

16. Learned counsel for the Petitioner has also referred to the decision in M/s. Yashaswin Enterprises V/s. The State of Maharashtra and others (Writ Petition No.5396 of 2021 and other connected petitions) wherein the Division Bench of this Court at Aurangabad Bench has held that the mode of acquiring the property contemplated under Section 127 (1) is as provided under Section 126(2) and (4) of the of the MRTP Act. The reason behind the same appears to be that under Section 126(1)(a) of the Act, 1966, the acquisition is by an agreement between the parties. Same is true about Section 126(1)(b). For an agreement there has to be a consensus ad idem between the parties. For Clause (a) both the parties on their own volition would agree for an amount of compensation. Clause (b) of Section 126 can be invoked if the owner or lessee, as the case may be, surrenders the area of land free of cost and free from all encumbrances. In case the land owner or the lessee, as the case may be, surrenders the land free of cost and free from all encumbrances, then in lieu of the amount agreed to, the Planning Authority, Development Authority or Appropriate Authority may award FSI or TDR and further additional FSI or TDR, if any, against the development or construction of the amenity on the surrendered land at his cost. If the parties do not arrive at an agreement for an amount of compensation as contemplated under clause (a), so also the land owner does not surrender or offer to surrender

the land as contemplated under clause (b), then the third option is provided to the Authority by making an application to the Government for acquiring such land under the provisions of the Act, 2003. The Division bench has observed that the three modes under Section 126(1) are distinct and separate and do not overlap. Section 126(1)(a) is operative only if the properties are acquired by an agreement, i.e. both the parties on their own volition agree for a consideration in the nature of an amount. The land owner or the lessee, as the case may, has also got the option to surrender the land free of cost and free of encumbrances and upon surrender of the land he is entitled for FSI or TDR against the area of the land surrendered, and also further additional FSI or TDR against the development or construction of the amenities on the surrendered land at his cost. In case land is not acquired by an agreement between the parties or the land owner does not surrender or offer to surrender the land, then the only option left to the Planning Authority is to make an application to the State Government for acquiring such land under the provisions of the Act, 2013 as contemplated under Section 126(1)(c) of the MRTTP Act.

17. While concurring with the above proposition, we would like to emphasize that the mode of acquisition of land under Section 126(1)(a) and (b) of the MRTTP Act is by an "agreement". The word agreement connotes offer and acceptance and signifies that the agreement is not an unilateral act but a bilateral act which is concluded with communication of acceptance of the offer. Thus, Acquisition of land reserved for public purpose under Section 126(1) (a) and (b) cannot be by any unilateral proposal of the Acquiring Authority to acquire the land with an offer of compensation or FSI/TDR. It is a mutual agreement between the Acquiring Authority and the land owner whereunder the land is acquired by the concerned authority by agreement either by paying an amount agreed to or by granting, in lieu of any agreed amount, FSI or TDR against the area of land surrendered free of cost, and free of all encumbrances. That being so, the modes of acquisition of land under Section 126(1)(a) and (b) of the MRTTP Act, can be resorted to only when there is a consensus between the parties; when the parties are ad idem and not when there is dissension; not when they are at variance. That means these modes of acquisition are essentially at the choice of either of the parties and not just the acquiring authority, and are taken to their logical end when the consensus is arrived at between these parties. In the absence of such concord, the only option available to the Acquiring Authority is to take recourse to Section 126(1) (c) of the Act and make an application to the State Government under the provisions 2013 Act.

18. It is well settled that the language employed in the statute is determinative factor of the legislative intent. The Court cannot change the scope of legislation or intention, when the language is plain and unambiguous. In *Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. & others* 2003 (2) SCC 111, the Hon'ble Supreme Court has observed that:-

"24. True meaning of a provision of law has to be determined on the basis of

what it provides by its clear language, with due regard to the scheme of law.

25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words, statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly unnecessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.

26. It is also well settled that a beneficial provision of legislature must be liberally construed so as to fulfill the statutory purpose and not to frustrate it.

27. An owner of a property, subject to reasonable restrictions which may be imposed by the legislature, is entitled to enjoy the property in any manner he likes. A right to use the property in a particular manner or in other words a restriction imposed on user thereof except in the mode and manner laid down under the statute would not be presumed."

19. There can be no dispute that Section 126 clothes the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority with the authority to acquire the land reserved for public purpose. Clauses (a) and (b) of Sub-Section (1) of Section 126 envisage agreement between the land owner / lessee and the acquiring authority. The intention of the legislature, as it comes out from the plain reading of these provisions is that wherever possible, land acquisition by agreement, either by payment of agreed amount or in lieu of such amount by grant of FSI/TDR, should be encouraged as these modes of acquisition are faster, more effective, and more economic in the long run. Their object seems to be three fold viz, efficacy, economy and expedition, and, therefore, the parties to acquisition of land process under the MRTTP Act are given these options placing emphasis upon agreement. This being the position, interpreting the word 'agreement' as unilateral act or decision of the acquiring authority, where the land owner has no say in the acquisition, will be violative of the provisions of the Act, the language of which is plain and unambiguous. Further, such interpretation will set at naught the legislative intent expressed in the statutory provision.

20. It also needs to be noted that though right to property is no more a fundamental right, still it remains a constitutional right under Article 300 A of the Constitution of India, which ensures that the right to property is not abridged by the State except in accordance with law and recognizes the right of the land owner to seek just and fair compensation. There can be no two opinions about the principle of law that compensation to be given to a land owner for loss of his property must be just and reasonable. Implicit in this principle is the concept of fairness for all stake-holders and balance of competing interests, so necessary to prevent unjust enrichment. But to say that the land owner has no choice whatsoever when it comes to mode (a) or mode (b) of land acquisition under Section 126 (1) of the MRTTP Act, would be in breach of the statutory provisions

and amount to enlarging the scope of legislation.

21. It may be added here that acquisition under Section 126(1) (a) or 126(1)(b) being acquisition by agreement, there is no statutory remedy to challenge determination of compensation awarded in the form of money or the extent of TDR/FSI as per DCR. Under the circumstances, compelling the land owner to accept the compensation or FSI/TDR as determined/ calculated by the Acquiring Authority, without questioning and bargaining will be unfair and lead to unjust and inequitable result. Suffice it to say that acquisition in breach of statutory provisions and without payment of just and fair compensation would tantamount to depriving the land owner of his property without the sanction of law and result in violation of Article 300A of the Constitution.

22. It may be noted here that while taking recourse to the modes of acquisition under clause (a) or clause (b) of Section 126(1) of the MRTP Act, there has to be a concluded contract between the parties. An agreement commences with an offer and is concluded with communication of acceptance of the offer. Thus, offer and acceptance are essential requirements of the agreement. An offer is a proposal under Section 2(a) when the person making offer signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of other to such an act or abstinence. When the person to whom the proposal is made signifies his assent to the proposal, the acceptance turns into a promise, as per Section 2(b). It is the every promise and every set of promises forming the consideration for each other is what would constitute an agreement under Section 2(e) and an agreement enforceable by law is a contract under Section 2(h) of the Contract Act.

23. The requirement under Section 7 of the Contract Act is that the acceptance must be absolute and unconditional. Whereas, Section 8 and 9 indicate that the acceptance can be express i.e. in words or by conduct. It need not be emphasized that conduct can be construed as acceptance only when the conduct discloses clear and unequivocal intention of accepting the offer. Hence, only when the facts of the case disclose that there was no reservation in signifying acceptance of the offer, it can be said to have been accepted by conduct. Whereas, if the facts disclose that the offeree had reservation in accepting the offer, his conduct may not amount to acceptance of the offer in terms of Section 8 of the Contract Act. Section 10 of the Contract Act postulates that the agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void under the Contract Act.

24. As it has been held by the Hon'ble Supreme Court in Bhagwandas Govardhasdas Kedia vs. Girdharilal Purshottamdas & Co. & Ors. AIR 1966 SC 543, an agreement does not result from mere state of mind, intent to accept an offer or even a mental resort to accept an offer does not give rise to a contract. If there be 'no meeting of mind' no contract may result. Hence the rule is that two minds must be ad idem with the terms of offer and its acceptance, in

consonance with the mirror image rule.

25. In *M/s. Padia Timber Company Pvt. Ltd. vs. The Board of Trustees, Vishakapatnam* (2021) 3 SCC 24, the Hon'ble Apex Court while analysing the fundamental contractual principles of offer and acceptance has highlighted that the offer and acceptance of the offer must be based on three components viz., certainty, commitment, and communication. It has been observed that it is trite law that while deciding whether a contract has been concluded, parties ought to keep in mind that acceptance of an offer must be absolute and unqualified. Acceptance with the variation of conditional acceptance would be in effect counter proposal and would not be a concluded contract, unless such variation or condition is accepted by the original proposer.

26. All these provisions of law would only show that a beginning of a contract is made by a specific and concrete proposal given by one party to another, showing one party's willingness to do something or to abstain from doing something and it is given with a view to obtaining the consent of other party to the proposed act or abstinence. The conclusion of the contract occurs when there is an unconditional and unqualified acceptance of the proposal by the other party and its communication to the party making the proposal. If there is no specific and clear proposal or offer, its unconditional acceptance will not result in a binding contract. If a proposal or offer is clear and unambiguous, but its acceptance is not unconditional and unqualified, it will also not lead to a contract binding upon the parties. This can be illustrated by giving an example. A book-seller sends to a reader catalogue of books containing list of books without mentioning price of each of the books and offers him to sell these books. This is not a proposal under Section 2 (a) of the Contract Act, the price of books being not quoted, and is an invitation to proposal or offer. The reader chooses one book from the list of books and sends to the book-seller his willingness to purchase 'A' book at price 'X'. This is a proposal and its acceptance will conclude the contract. If the book-seller quotes price of each of the listed books and offers to sell them at those prices, it would be a proposal under Section 2 (a). But, if the reader accepts the offer and communicates to the book-seller that he would purchase 'A' book at 'Y' price different than the price quoted or puts some conditions not mentioned in the proposal, it would be a counter proposal. We may clarify here that the conclusion drawn in this example about what concludes a contract is on the assumption that other requirements of a valid contract under Section 10 of the Contract Act, are fulfilled.

27. Thus the contract would be legal and binding only when the terms are settled and the contract is concluded. Of course, whether there is any concluded contract or not would be a question of fact to be determined in the facts and circumstances of each case. It then follows that any application made by a land owner or lessee for grant of FSI or TDR or any approval given by the acquiring authority to such an application would have to be examined and considered on the touchstone of these requirements of a contract. Upon such examination, if it

is found that any of these requirements is missing, there would be no concluded contract between the parties and the land owner or lessee would be at liberty to withdraw his application for grant of FSI/TDR.

28. While finding out if there is a concluded contract between the parties or not, in case of an agreement under Section 126 (1)(a), not much difficulty would be faced as the requirement thereunder is of plain and clear agreement whereby the land is acquired by paying an amount agreed to. But determination of question as regards agreement under Section 126 (1) (b) requires examination of acts and conduct of parties and an assurance that they are in consonance with the requirements of Section 126 (1)(b) of the MRTP Act.

29. Under Section 126(1)(b) of MRTP Act, grant of FSI/TDR is against the area of land surrendered free of cost and free from all encumbrances. Right to receive FSI/TDR flows from the surrender of possession of the land covered by the Development Plan, free of cost and free of encumbrances. The provisions of Section 126(1)(b) of the MRTP have been considered by the Hon'ble Supreme Court in *Godrej & Boyce Manufacturing Company Ltd. vs. State of Maharashtra & Ors.* (2009) 5 SCC 24. The dispute in the said case was relating to grant of additional floor spacing index (FSI) or transferable development rights (TDR) commensurate to the value of the amenities constructed by the land owner at their own cost. The Hon'ble Supreme Court has held that Section 126(1)(b) of the Act uses the word "against". It speaks of granting FSI or TDR "against the area of land surrendered" and further additional FSI or TDR "against the development or construction of amenities on the surrendered land." Considering the dictionary meaning of the word "against", the Hon'ble Supreme Court held that on the basis of the language used in Section 126(1)(b) it could be legitimately argued that what is contemplated is to recompense the land owner proportionate to the value of the development or construction of the amenity on the surrendered land. The Hon'ble Supreme Court has pointed out that para 5 in Appendix VII to the Regulation uses the words "equal to the gross area of reserved plot". Therefore, in so far as the bare land is concerned, there is no difficulty.

30. Considering the language of Section 126(1)(b) as well as the aforesaid decision of the Supreme Court, the division Bench of this Court in *Nirmal Ujwal Co-operative Credit Society (Ltd.) Nagpur vs. the State of Maharashtra*. Writ Petition No.728 of 2017 has held that the grant of TDR under Section 126(1)(b) accrues or flows from the surrender of the area covered by the Development Plan free of cost and free from all encumbrances. In the absence of such surrender, TDR is not available under the said provision. We fully concur with these observations.

31. It therefore follows that once the land owner accepts the offer of FSI/TDR made by the Acquiring Authority, he would be required to surrender possession in respect of the land covered by Development Plan Rights free of cost and free of encumbrances, in lieu of compensation. It is only when the land owner

surrenders the property rights, he would be entitled to statutory grant of FSI/TDR as per the DC Rules.

32. Grant of FSI/TDR and surrender of possession of land being the part of the agreement under clause 126(1)(b), in our view, consensus arrived at between the parties about the extent of FSI/TDR calculated or offered by the acquiring authority, acceptance of such FSI/TDR and communication of acceptance of the offer or surrender of land free of cost and without any encumbrances, would be a concluded contract under Section 126(1)(b) of the Act. In other words, it is the surrender of land, or communication of acceptance of the condition to surrender the land, after approval of the proposal for grant of quantified/calculated FSI/TDR, which concludes the contract. In the absence of such consensus, there would be no concluded contract and there would be no embargo on the land owner to withdraw the offer and refuse to surrender the land, notwithstanding that the Planning Authority has approved the request of the land owner for grant of monetary compensation or grant of FSI/TDR. This flows from the principle that only a concluded contract binds the parties and the person who makes an offer has the right to withdraw the offer before the contract is concluded. In an eventuality, where there is no concluded contract and the land owner refuses to surrender possession of the land, the only option available to the Planning Authority is to make an application to the State Government for acquiring such land under the provisions of 2013 Act, as contemplated under Section 126 (1)(c) of the MRTP Act.

33. The above discussion thus would show that whenever a question arises as to whether or not a land owner or lessee, as the case may be, is within his right to withdraw his application made for grant of FSI or TDR after its approval by acquiring authority, it's answer would depend upon the facts and circumstances of each case. The facts and circumstances of each case would have to be examined individually and it would have to be ascertained as to whether or not there has occurred any concluded contract between the parties. Sometimes it may happen that the application made by the land owner or lessee is only in the nature of invitation to offer or proposal from the acquiring authority and the approval given to such an application by acquiring authority subject to the condition of surrender of the land would be an offer. At other time, there may be a case when the land owner or lessee in the application itself indicates that he is offering to surrender the land having certain area and quantifies the FSI or TDR to which he is entitled to receive and such specific application is accepted in an absolute and unqualified manner. In such a case the application would be an offer and it's acceptance would be an agreement within the meaning of Section 2 (e) and would also be a contract under Section 10 of the Contract Act if all other requirements of a valid contract are fulfilled. So, the question about the right to withdraw an application made for grant of FSI or TDR can be answered in the affirmative only when there is no concluded contract between the parties.

34. We are, thus, of the view that once there is a concluded contract between

the land owner or the lessee and the acquiring authority as regards grant of monetary compensation or grant of TDR/ FSI in lieu of compensation, the land owner or the lessee cannot withdraw his request and thereby refuse to surrender the land. He can withdraw his such request only if there is no concluded contract between the parties. What would be considered to be a concluded contract between the parties, would be a question of fact to be determined by considering all the relevant facts and circumstances of each case.

35. Now, we will consider the issue of what constitutes a step commencing the acquisition proceeding in the context of Section 126 (1) (b) of the MRTTP Act.

36. Section 127 deals with lapsing of reservation. This section provides that if any land reserved, allotted or designated for any purpose specified in any plan under MRTTP Act is not acquired by agreement or otherwise within 10 years from the date on which the final plan comes into force, the owner or any person interested can serve a purchase notice to the concerned authorities. If the Authorities do not acquire the land or take steps within 24 months from the date of service of such notice for acquisition of land, 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 permissible in the case of adjacent land under the relevant plan.

37. In *Municipal Corporation of Greater Bombay, Vs. Dr. Hakimwadi Tenants Association and others*, 1988 (Supp) SCC 55, the Hon'ble Supreme Court held that the steps towards commencement of the acquisition would necessarily be the steps for acquisition and not a step, which may not result into acquisition and merely for the purpose of seeking time so that section 127 does not come into operation. It was held that steps for acquisition of the land would be issuance of the declaration under Section 6 of the Land Acquisition Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation.

38. In *Girnar Traders vs. State of Maharashtra and others* (2007) 7 SCC 555, the Hon'ble Supreme Court after considering the entire scheme of Sections 126 and 127 observed that the step taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

39. In *Shrirampur Municipal Council, Shrirampur vs. Satyabhamabai Bhimaji Dawkher* (2013) 5 SCC 627, the Hon'ble Supreme Court reiterated the finding in *Girnar Traders* and held that mere passing of a resolution by the Planning

Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceeding for the acquisition of land. It is held that the State Legislature has prescribed the time limit to ensure that the land owners / other interested persons whose land is utilized for execution of the Development Plan/ Town Planning Scheme etc are not left high and dry.

40. These principles have been reiterated in *Poona Timber Merchants and Saw Mill Owners Association vs. State of Maharashtra & Ors.* (2015) 13 SCC 544, *Chhabildas vs. State of Maharashtra and others* (2018) 2 SCC 784 and in the recent decision of the Hon'ble Supreme Court in *Kolhapur Municipal Corporation & Ors. vs. Vasant Mahadev Patil (dead) through Legal Representatives and others* (2022) 5 SCC 758.

41. It is thus well settled that the step taken under the aforesaid section should be an irreversible step, which will culminate in acquisition of land. Hence, mere grant of approval or passing of resolution by the authorities concerned for grant of TDR in lieu of monetary compensation cannot be treated as a step for acquisition of land, but it is the conclusion of a contract regarding acquisition of land by granting FSI/TDR which constitutes a step for acquisition of land. Surrender of land with a view to obtaining FSI/TDR can be a step to commence acquisition proceedings, if it is something by which conclusion of contract occurs. There may be, however, be cases in which by acts and conduct of parties contract in terms of Section 126(1)(b) of the MRTP Act is concluded even before surrender of land and the latter act is only consequential to contract between the parties. Ultimately, it all boils down to the stage when the contract between parties concludes.

42. In the case of *Asha Sunil Zawar (supra)* the Division Bench at Aurangabad has taken a view that offering compensation of TDR within 24 months from the date of receipt of purchase notice is the step to commence the acquisition of the reserved land, that the option of TDR does not rest with the land owner, that the land owner cannot insist upon planning authority to acquire the land only by adopting clause (c) of Section 126 of the MRTP Act. We have already clarified the law in this regard and the clarification given by us as above does not permit us to endorse the view taken in *Asha Sunil Zawar (supra)* and, therefore, we find that the view so taken therein does not represent the correct position of law.

43. In view of the above, we answer the reference as under:

Question (1) - This Court holds that the acquisition under Section 126(1)(a) and (b) of the Maharashtra Regional & Town Planning Act, 1966 has to be by consensus between both the parties and not only at the option of the Acquiring Authority.

Question (2) - Mere approval of the request of the land owner to grant of monetary compensation or grant of TDR/FSI in lieu of compensation by itself will not always result in a concluded contract and the question would have to be

determined in the facts and circumstances of each case. Therefore, the land owner can withdraw his request and refuse or decline to surrender the land as long as there is no concluded contract between the parties.

Question (3) – Mere grant of approval or passing of resolution by the authorities concerned for grant of TDR/FSI in lieu of monetary compensation is not a step for acquisition of land, thereby commencing the proceedings for the acquisition of land, unless it concludes the contract between the parties.

44. With these findings we direct the Registry to place the matter before the original Bench for passing further orders.