

(2009) 10 BOM CK 0088

In the Bombay High Court

Case No : Civil Writ Petition No. 988 of 2001

Smt. Indirabai Bhalchandra Bhajekar, Dr. Ashok Bhalchandra
Bhajekar and Smt. Nilima Arvind Raddi **APPELLANT**

Vs

The Pune Municipal Corporation and The State of
Maharashtra, The Ministry of Urban Development **RESPONDENT**

Date of Decision : 09-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 300A
Development Control Rules for Greater Mumbai, 1967 — Rule 14.4.1
Land Acquisition Act, 1894 — Section 6
Limitation Act, 1963 — Section 12, 14, 5, 6
Maharashtra Regional and Town Planning Act, 1966 — Section 1, 10, 101, 11, 12
Maharashtra Town Planning (Second Amendment) Act, 1972 — Section 40(1)

Citation : (2009) 111 BOMLR 4251

Hon'ble Judges : Roshan Dalvi, J;B.H. Marlapalle, J

Bench : Division Bench

**Advocate : Mohan Pungaliya, for the Appellant; R.S. Khadapkar for Respondent
No. 1 and S.D. Rayrikar, AGP, for the Respondent**

Judgement

B.H. Marlapalle, J.—This petition filed under Article 226 of the Constitution prays for, (a) a declaration that Final Plot No. 103 in Town Planning Scheme, Pune No. III is reserved for parking and not for school, (b) directions to the respondents to forthwith allow the petitioners to develop their land for the purpose of reservation for parking, (c) quashing and setting aside the notice dated 2/12/1997 issued u/s 88-89 of M.R.T.P. Act, 1966 as being illegal, (d) quashing and setting aside the Resolution No. 94 passed on 29/6/2000 along with such further actions based on the same by respondent No. 1-Corporation, (e) directions to the respondents to withdraw the proceedings if initiated u/s 37 of the M.R.T.P. Act to change the land use of parking on the subject plot, (f) declaration that the possession allegedly taken on paper of the subject plot by the Municipal Corporation is illegal, null and void and to restore the said possession in its original form.

2. The petitioners' predecessor late Shri Bhalchandra Bhajekar was the owner of original Plot No. 109 (CTS No. 674), Ghorpade Peth, Pune and admeasuring 2724.9 sq.mtrs. and subsequently marked as Final Plot No. 103 admeasuring about 2306.6 sq.mtrs. and located within the limits of Haveli Taluka of Pune District. On the demise of Shri Bhalchandra Bhajekar on 28/10/1976, the names of original petitioners came to be entered as the owners of the suit plot. During the pendency of this petition, petitioner No. 1 died and petitioner Nos. 2 and 3 are her legal heirs. In the year 1935, the plot was proposed to be reserved for a Municipal School under the Draft Town Planning Scheme and the same reservation was sanctioned by the Government on 1/4/1943 under the Bombay Town Planning Act, 1915. A development plan of Pune City was sanctioned on 15/8/1956. The Act of 1915 was replaced by the Bombay Town Planning Act, 1954 which came into force w.e.f. 1st April, 1957. Under the said Act, the draft development plan was sanctioned by the State Government on 15/8/1966. The Maharashtra Regional Town Planning Act, 1966 was brought into force by repealing and replacing the Town Planning Act, 1954 on 11th January, 1967. Under the Maharashtra Regional Town Planning Act, 1966 (M.R.T.P. Act) an Arbitrator came to be appointed for framing the Draft Scheme, which was forwarded to the State Government for sanction in the year 1981 and in the said proposal the suit plot was shown reserved for a Municipal School. Under the said Act the State Government appointed the Director, Town Planning Scheme, Maharashtra State, Pune as a Special Officer for preparation of the Draft Revised Development Plan as the earlier sanctioned plan was to expire on 10th September, 1982 and it was published on 18/9/1982, in which the suit plot was proposed to be reserved for parking. The Draft Development Plan was scrutinized by the Government of Maharashtra and it was finally sanctioned on 5/1/1987. This decision was informed to respondent No. 1-Corporation by the Urban Department of the Government of Maharashtra vide its letter dated 6/1/1987. However, at that time the proposal of Final Town Planning Scheme submitted in the year 1981 by the respondent No. 1 - Corporation was pending with the State Government and it came to be sanctioned on 15/7/1989, whereas 15/9/1989 was the date fixed on which all the liabilities created by the Final Scheme were to come into force. Thus, in the Revised Development Plan sanctioned on 5/1/1987, the suit plot came to be reserved for parking, whereas in the Town Planning Scheme sanctioned on 15/7/1989 and brought into force from 15/9/1989 the said plot was shown as reserved for Municipal School. It appears when the Final Town Planning Scheme was sanctioned on 15/7/1989, the Development Plan sanctioned on 5/1/1987 was not taken into consideration so far as it concerned the suit plot.

3. The petitioners were served with the notice dated 2/12/1997 issued by the Deputy Engineer of respondent No. 1 purportedly u/s 89-90 of the M.R.T.P. Act and under Rule No. 19-20 of the Maharashtra Town Planning Rules, 1974 contending that the said land was under reservation for a public purpose namely a municipal school as per the Town Planning Scheme, Pune No. III, as sanctioned

by the Government of Maharashtra on 15/7/1989 and the petitioners were called upon to vacate the said land, to remove any structure or part of the structure and to make available the land to the Corporation, failing which the Corporation would take action u/s 89-90 of the M.R.T.P. Act. The petitioners also claim that they came across, subsequently, the submissions made by the Additional Commissioner of respondent No. 1 - Corporation to its Secretary vide his letter dated 27/1/2000 by which there was a proposal to hand over the suit plot to Shri Vasantdada Seva Sanstha so as to construct a Boys and Girls School and this proposal was made at the behest of one of the sitting Corporators. Similarly, another society by name Rajashree Shahu Maharaj Samaj Vikas Sanstha for backward classes had also made a demand in respect of the said land for construction of a Hostel and the Municipal Corporation was considering to hand over Final Plot No. 103 to one of these institutions on the basis of the reservation of Municipal School as set out in Town Planning Scheme - III. The petitioners claim that there was a contradiction between the notice dated 2/12/1997 and the letter dated 27/1/2000 regarding the reservation of the suit plot. The petitioners also contended that their representative Shri Avinash Jadhav had submitted an application to the respondent No. 1 - Corporation with a request to communicate and confirm the user of the suit land and the Corporation by its letter dated 17/6/2001 informed that the user of the land was under reservation for parking and that the said land was partly affected by slum. However, the letter dated 27/1/2000 indicated a different reservation i.e. for Municipal School and the Corporation claimed that the suit plot had vested in the Corporation and it had taken over its possession, despite the fact that the property card had shown the ownership of the petitioners all along and they were paying the property taxes to the respondent - Corporation till date. The petitioners also alleged that on 29/6/2000 Resolution No. 94 was passed by the Corporation to hand over the suit plot to a society by name Vasantdada Seva Sanstha for a period of 30 years and on the payment fixed by the City Engineer. This proposal, as per the petitioners, was at the behest of Shri Sanjay Balgude, one of the Corporators and the Corporation had no such authority unless the suit plot was acquired by the Corporation by following the procedure u/s 126 of the M.R.T.P. Act.

4. Affidavit-in-reply has been filed by the Junior Engineer working in the Development Plan Department of the respondent - Municipal Corporation so as to oppose the petition. It has been stated that (a) the petition does not make out any cause of action and, therefore, it deserves to be dismissed; (b) the arbitration proceedings were initiated for preparation of town planning scheme and the petitioner appeared before the arbitrator who gave his decision confirming the proposal for reservation of the subject plot for a municipal school and the same has not been challenged by filing an appeal u/s 74 of the MRTPA Act; (c) consistent with the decision of the Arbitrator for reservation of the subject plot for municipal school, the town planning scheme came into force with effect from 15th September 1989 and the petition has been filed on or about 2nd February 2001 and, therefore, it suffers from gross delays / laches; (d) the

petitioners were issued with a notice dated 2nd December 1997 under Sections 89 and 90 of the MRTP Act to hand over the possession of the suit plot and the possession has been taken over by drawing the panchanama on 13th May 1999. Consequently the suit plot has vested with the Corporation free from any encumbrances and, therefore, the petitioners have no locus standi to maintain the present petition as they have been divested of their title to the suit plot; (e) the notice dated 2nd December 1997 was challenged by one Shri Narayan Baykoba Kakade (a tenant on part of the suit plot) in Regular Civil Suit No. 1088 of 1998 and the application for temporary injunction came to be dismissed by the trial Court on 25/11/1998. The said order was challenged in Misc. Civil Appeal No. 468 of 1998 which was dismissed by the District Court on 9/4/1999. The plaintiff had approached this Court in Civil Revision Application No. 446 of 1999 and it was rejected on 5/5/1999. Consequently the possession of the suit plot was taken over on 13th May 1999; (f) the Corporation has approached the Government of Maharashtra u/s 37 of the MRTP Act for approval to the proposal for change of reservation i.e. from "parking" to "municipal school" as per the letter dated 24th December 2000 and in any case under Rule 14.4.1 of the Development Control Rules such a variation in reservation could be done by the Corporation by way of a General Body Resolution and subject to prior approval of the State Government.

The Corporation contends that the petitioners have no title to the suit plot and the claim that they have been paying property taxes and the plot stands in their name even as of now in the Government / Municipal record has no consequence at all. It is contended that a letter dated 14th July 1999 was addressed to the City Survey Officer but it was replied on 11/11/1999 and the Corporation's name has not been recorded. It is only a ministerial act and that by itself does not entitle the petitioners to claim that they still continue to be the owners of the suit plot. It is also emphasized that the town planning scheme approved by the Government vide its notification dated 15th July 1989 will prevail over the development plan sanctioned by the State Government on 5th January 1987.

5. Affidavit in rejoinder has been filed on behalf of the petitioners explaining the delay caused in filing this petition with reference to the notice dated 2/12/1997 and it has been denied that that suit plot has vested with the Municipal Corporation. It has been pointed out that as per the resolution dated 8/11/1999 passed by the Education Board of the Municipal Corporation and as per the letter dated 29/6/2001 by the said Board, it is clear that in the vicinity of the suit plot there are eight schools and thus there is no requirement for one more municipal school. The petitioners have brought on record the property card of the suit plot as amended upto 1977 and it is stated in the affidavit dated 31st August 2009 that there is no change in the said property card even as of now. In the said property card the petitioners are shown to be the owners of the suit plot.

6. The Government of Maharashtra through the Deputy Director of Town Planning, Pune Division, Pune has filed an affidavit. It has been pointed out that

the Arbitrator appointed under the MRTP Act is empowered to transfer the rights from the original plot to the reconstituted plot or extinction of such rights as per Section 72(xiii) of the said Act. Affidavit refers to Section 101 of the MRTP Act as well and it has been pointed out that Original Plot No. 109 became Final Plot No. 103 in the reconstitution of plots as per the decision of the Arbitrator and against the said decision no appeal u/s 74 of the MRTP Act was filed by the petitioners before the Tribunal and if no such appeal was filed, u/s 82(1) of the Act, the decision of the Arbitrator shall be final and binding on all the parties. The scheme finalized by the Arbitrator and approved by the Government shall have effect u/s 86(3) from the date of the notification issued and as per Section 88 of the MRTP Act all lands required by the Planning Authority shall vest absolutely in the Planning Authority free from all encumbrances. The affidavit further states that though the Corporation claims to have taken possession of Final Plot No. 103 on 13/5/1999, the record of rights has not been changed. The affidavit in short supports the contentions of the Corporation.

7. At the first instance it requires to be noted that the suit plot has not yet been handed over to any educational society by the Corporation and from the order dated 2nd May 2001 passed in this petition it is clear that the Municipal Corporation approached the State Government for modification of the Development Plan u/s 37 of the MRTP Act and till this day no such sanction has been received from the State Government and, therefore, the reservation of the subject plot is that of "parking" as per the sanctioned Development Plan and the proposal to change the reservation to a "municipal school" as per the sanctioned town planning scheme cannot be brought into force unless the modification submitted u/s 37 is approved by the State Government.

8. Though the petitioners have prayed for various reliefs as recorded hereinabove, we are required to consider only the following issues viz. (a) whether the reservation on the subject plot for parking continues to be operative despite the town planning scheme sanctioned by the State Government on 15/7/1989, (b) the validity and legality of the notice dated 2/12/1997 and (c) whether the Municipal Corporation can claim to have taken over the possession of the suit plot and that it has vested in the Corporation free from any encumbrances. The issue of quashing and setting aside Resolution No. 94 passed by the Corporation on 29/6/2000 does not call for any consideration as admittedly the said resolution has not been acted upon and prior permission of the Government to change the reservation from "parking" to "municipal school" has not been approved by the State Government.

9. So far as the arbitration proceedings are concerned Mr. Pungaliya fairly concedes that the arbitration proceedings were held sometimes in the year 1964 and the petitioners' predecessor had participated in the same. It is also admitted that he received an amount of Rs. 2000/- by way of compensation consequent to the said arbitration proceedings. Mr. Pungaliya clarified that the said arbitration proceedings were in respect of reconstruction / realignment of original Plot No.

109 and while demarcating Final Plot No. 103, the petitioner had lost some area and, therefore, the compensation amount was paid. He stoutly denies that there were any arbitration proceedings in which the petitioner had participated, qua the town planning scheme sanctioned in the year 1989 by the State Government and in any case the scheme so sanctioned cannot supersede the Development Plan finally approved by the State Government as per the communication dated 5/1/1987 received by the respondent - Corporation. As per Mr. Pungaliya the arbitration proceedings held in the year 1964 cannot be the basis in support of the impugned notice dated 2/12/1997 and the subsequent paper possession claimed to have been taken of the suit plot by the respondent - corporation. He reiterated that unless the compensation is paid pursuant to the award passed, the suit plot cannot become the property of the Municipal Corporation and the arbitration proceedings relied upon by the Corporation were the proceedings only for reconstruction / realignment of the plots within the meaning of Section 72 of the Act. He submitted that final vesting within the meaning of Section 82 of the suit plot in favour of the Corporation can arise only if the arbitration proceedings were in respect of the reconstruction / re-lay out of the plots and whatever proceedings were held in the year 1964, the petitioners' lost some area in the reconstruction of plot i.e. original Plot No. 109 has been reconstructed to Final Plot No. 103 and the petitioners were paid compensation.

10. Before dealing with the rival submissions between the parties and the authorities relied upon in support of the aforesaid contentions, it has become necessary to set out certain provisions of the said Act which require interpretation in the present petition. Section 2(9) defines the development plan. Sections 30 and 31 provide for a draft development plan and sanction to the draft development plan.

2(9) "Development plan" means a plan for the development or re-development of the area within the jurisdiction of a Planning Authority and includes revision of a development plan and proposal of a special planning Authority for development of land within its jurisdiction;

30. Submission of draft-Development Plan. -(1) The Planning Authority or as the case may be, the said Officer shall submit that draft-Development Plan to the State Government for sanction within a period of twelve months from the date of publication of the notice in the Official Gazette regarding its preparation u/s 26;

Provided that, the State Government may, on an application by a Planning Authority or the said Officer by an order in writing, and for adequate reasons which should be recorded, extend from time to time the said period by such further period as may be specified in the order but not in any case exceeding twenty-four months in the aggregate.

(2) The particulars referred to in Sub-section (2) of Section 26 shall also be submitted to the State Government.

31. Sanction to draft-Development Plan. -(1) Subject to the provisions of this

section, and not later than one year from the date of receipt of such plan from the Planning Authority, or as the case may be, from the said Officer, the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette sanction the draft- Development Plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft-Development plan to the Planning Authority or as the case may be, the said Officer for modifying the plan as it may direct, or refuse to accord sanction and direct the Planning Authority or the said Officer to prepare a fresh Development plan;

Provided that, the State Government may, if it thinks fit, whether the said period has expired or not, extend from time to time, by a notification in the Official Gazette, the period for sanctioning the draft Development plan or refusing to accord sanction thereto, by such further period as may be specified in the notification;

Provided further that, where the modifications proposed to be made by the State Government are of a substantial nature, the State Government shall publish a notice in the Official Gazette and also in local newspapers inviting objections and suggestions from any person in respect of the proposed modification within a period of sixty days from the date of such notice.

(2) The State Government may appoint an officer of rank not below that of Class I officer and direct him to hear any such person in respect of such objections and suggestions and submit his report thereon to the State Government.

(3) The State Government shall before according sanction to the draft-Development plan take into consideration such objections and suggestions and the report of the officer.

(4) The State Government shall fix in the notification under Sub-section (1) a date not earlier than one month from its publication on which the final Development plan shall come into operation.

(5) If a Development plan contain any proposal for the designation of any land for a purpose specified in Clauses (b) and (c) of Section 22, and if such land does not vest in the Planning Authority, the State Government, shall not include that in the Development plan, unless it is satisfied that the Planning Authority will be able to acquire such land by private agreement or compulsory acquisition not later than ten years from the date on which the Development plan comes into operation.

(6) A Development plan which has come into operation shall be called the "final Development plan" and shall, subject to the provisions of this Act, be binding on the Planning Authority.

11. The provisions of Town Planning Scheme are covered under Chapter V of the said Act. Section 59 provides for preparation and contents of the Town Planning

Scheme. The said section reads as under:

59. Preparation and contents of Town Planning Scheme - (1) Subject to the provisions of this Act or any other law for the time being in force

(a) a Planning Authority may for the purpose of implementing the proposals in the final Development plan, prepare one or more town planning schemes for the area within its jurisdiction, or any part thereof;

(b) a town planning scheme may make provision for any of the following matters, that is to say

(i) any of the matters specified in Section 22;

(ii) the laying out or re-laying out of land, either vacant or already built upon, including areas of comprehensive development;

(iii) the suspension, as far as may be necessary for the proper carrying out of the scheme, of any rule, by law, regulation, notification or order made or issued under any law for the time being in force which the Legislature of the State is competent to make;

(iv) such other matter not inconsistent with the object of this Act, as may be directed by the State Government.

(2) In making provisions in a draft town planning scheme for any of the matters referred to in Clause (b) of Sub-section (1), it shall be lawful for a Planning Authority with the approval of the Director of Town Planning and subject to the provisions of Section 68 to provide for suitable amendment of the Development Plan."

Section 61 of the Act provide for publication of a draft scheme. The said Section 61 reads as under:

61. Making and publication of draft scheme by means of notice. -(1) Not later than twelve months from the date of the declaration, subject however, to Sub-section (3), the Planning Authority shall in consultation with the Director of Town Planning, make a draft scheme for the area in respect of which the declaration was made, and published a notice in the Official Gazette and in such manner as may be prescribed stating that the draft scheme in respect of such area has been made. The notice shall state the name of the place where a copy thereof shall be available for inspection by the public and shall state that copies hereof or any extract there from certified to be correct shall be available for sale to the public at a reasonable price.

(2) If the Planning Authority fails to make a draft scheme and publish a notice regarding its making within the period specified in Sub-section (1) or within the period extended under Sub-section (3), the declaration shall lapse, unless the State Government appoint an Officer to prepare and submit the draft scheme to the State Government on behalf of the Planning Authority not later than twelve

months from date of such appointment or the extended period under Sub-section (3); but any such lapse of declaration shall not debar the Planning Authority from making a fresh declaration any time in respect of the same area.

(3) The State Government may, on application made by the Planning Authority, or, as the case may be, the officer, from time to time by notification in the Official Gazette extend the period specified in Sub-section (1) or (2) by such period not exceeding six months as may be specified in the notification.

Section 64 provides for contents of a draft scheme. Said section reads as under:

64. Contents of draft scheme. -A draft scheme shall contain the following particulars so far as may be necessary, that is to say,

- (a) the ownership, area and tenure of each original plot;
- (b) reservation, acquisition or allotment of land required under Sub-section (1) of Clause (b) of Section 59 with the general indication of the uses to which such land is to be put and the terms and conditions subject to which, such land is to be put to such uses;
- (c) the extent to which it is proposed to alter the boundaries of the original plots by reconstitution;
- (d) an estimate of the total cost of the scheme and the net cost to be borne by the Planning Authority;
- (e) a full description of all the details of the scheme with respect of such matters referred to in Clause (b) of Section 59 as may be applicable;
- (f) the laying out or re-laying out of land either vacant or already built upon including areas of comprehensive development;
- (g) the filling up or reclamation of low lying, swamp or unhealthy areas or levelling up of land;
- (h) any other prescribed particulars." Section 65 provides reconstitution of plots under the town planning scheme and the said Section 65 reads as under:

"65. Reconstituted plot - (1) In the draft scheme, the size and shape of every reconstituted plot shall be determined, so far as may be, to render it suitable for building purposes, and where a plot is already built upon, to ensure that the buildings as far as possible comply with the provisions of the scheme as regards open spaces.

(2) For the purpose of Sub-section (1), a draft scheme may contain proposals,

(a) to form a final plot by reconstitution of an original plot by alteration of the boundaries of the original plot, if necessary;

(b) to form a final plot from the original plot by the transfer wholly or partly of the adjoining lands;

(c) to provide, with the consent of the owners, that two or more original plots each of which is held in ownership in severally or in joint ownership shall hereafter, with or without alteration of boundaries, be held in ownership in common as a final plot;

(d) to allot a final plot to any owner dispossessed of land in furtherance of the scheme; and

(e) to transfer the ownership of an original plot from one person to another.

The provisions of Section 67 provide for a owner of the plot to file an objection to the draft planning scheme which is at the consideration stage. The said Section 67 stipulates as under:

67. Objections to draft scheme to be considered. -If within thirty days from the date of the publication of notice regarding the preparation of the draft scheme, any person affected thereby communicates in writing any objection relating to such scheme, the Planning Authority or the officer appointed under Sub-section

(2) of Section 61 or Section 63 shall consider such objection and may, at any time before submitting the draft scheme to the State Government as hereinafter provided, modifying such scheme as it or he thinks fit." Section 68 of the Act provides for the power of the State Government to sanction the draft scheme. Said Section 68 reads as under:

68. Power of State Government to sanction draft scheme - (1) The Planning Authority or as the case may be, the officer aforesaid shall, not later than six months from the date of the publication of the notice in the Official Gazette regarding the making of the draft scheme, submit the same with any modifications which it or he may have made therein together with a copy of objections received by it or him to the State Government, and shall at the same time apply for its sanction.

(2) On receiving such application, after making such inquiry as it may think fit and consulting the Director of Town Planning, the State Government may, not later than six months from the date of its submission, notification in the Official Gazette or not later than such further time as the State Government may extend, either sanction such draft scheme with or without modifications and subject to such conditions as it may think fit to impose or refuse to give sanction.

(3) If the State Government sanctions such scheme, it shall in such modification state at what place and time the draft scheme shall be open to the inspection of the public and the State Government shall also state therein that copies of the scheme or any extract there from certified to be correct shall on application be available for sale to the public at a reasonable price." u/s 72 of the Act, an arbitrator is required to be appointed once the State Government has granted sanction to the draft scheme and is published in the official gazette. The arbitrator thereafter is required to compute the compensation for the purpose of receiving the same from the plot owners if they have been beneficiary under the

scheme by way of additional area or by way of developed plot of land and/or to pay the owners if they have been deprived of their rights in respect of their original plots. The said Section 72 reads as under:

72. Arbitrator; his powers and duties. -(1) Within one month from the date on which the sanction of the State Government to the draft scheme is published in the Official Gazette, the State Government shall for purposes of one or more planning schemes received by it for sanction appoint any person possessing such qualifications as may be prescribed to be an Arbitrator with sufficient establishment and his duties shall be as hereinafter provided.

(2) The State Government may, if it thinks fit at any time; remove for incompetence or misconduct or replace for any good and sufficient reason an Arbitrator appointed under this section and shall forthwith appoint another person to take his place and any proceeding pending before the Arbitrator immediately before the date of his removal or replacement shall be continued and disposed of by the new Arbitrator appointed in his place.

(3) In accordance with the prescribed procedure, every Arbitrator shall,

(i) after notice given by him in the prescribed manner define, demarcate and decide the areas allotted to, or reserved for the public purpose or purposes of the Planning Authority, and also the final plots;

(ii) after notice given by him in the prescribed manner decide the person or persons to whom a final plot is to be allotted; and when such plot is to be allotted to persons in ownership in common, decide the shares of such persons;

(iii) estimate the value of and fix the difference between the values of the original plots and the values of the final plots included in the final scheme, in accordance with the provisions contained in Clause (f) of Sub-section (1) of Section 97;

(iv) estimate the compensation payable for the loss of the area of the original plot in accordance with the provisions contained in Clause (f) of Sub-section (1) of Section 97 in respect of any original plot which is wholly acquired under the scheme;

(v) determine whether the areas allotted or reserved for the public purpose or purposes of the Planning authority are beneficial wholly or partly to the owners or residents within the area of the scheme;

(vi) estimate the proportion of the sums payable as compensation on each plot used, allotted or reserved for the public purpose or purposes of the Planning authority which is beneficial partly to owners or residents within the scheme and partly to the general public, which shall be included in the costs of the scheme;

(vii) determine the proportion of contribution to be levied on each plot used, allotted or reserved for the public purpose or purposes of the Planning Authority which is beneficial partly to the owners or residents within the area of the

scheme and partly to the general public;

(viii) determine the amount of exemption, if any, from the payment of the contribution that may be granted in respect of plots or portions thereof exclusively used or occupied for religious or charitable purposes at the date of which the final scheme is drawn up under Clause (xviii) of this Sub-section;

(ix) estimate the value of final plots included in the final scheme and the increment to accrue in respect of such plots in accordance with the provisions of Section 98;

(x) calculate the proportion in which the increment in respect of the final plots included in the final scheme shall be liable to contribution to the cost of the scheme in accordance with the provisions contained in Section 97;

(xi) calculate the contribution to be levied on each final plot included in the final scheme;

(xii) determine the amount to be deducted from or added to, as the case may be, the contribution leviable from a person in accordance with the provisions contained in Section 10;

(xiii) provide for the total or partial transfer of any right in an original plot to a final plot or provide for the extinction of any right in the original plot in accordance with the provisions contained in Section 101;

(xiv) estimate the amount of compensation payable u/s 66;

(xv) where a plot is subject to a mortgage with possession or a lease, decide the proportion of compensation payable to or contribution payable by the mortgagee or lessee on one hand and mortgagor or lessor on the other;

(xvi) estimate in reference to claims made before him, after the notice given by him in the prescribed manner, the compensation to be paid to the owner or any property of right injuriously affected by the making of a town planning scheme in accordance with the provisions contained in Section 102;

(xvii) determine the period in which the works provided in the scheme shall be completed by the Planning Authority.

(xviii) draw in prescribed form the final scheme in accordance with the draft scheme; Provided that

(a) he may make variations from the draft scheme;

(b) he may with the previous sanction of the State Government after hearing the Planning Authority and any owners who may raise objections make substantial variations in the draft scheme.

Explanation - For the purpose of Sub-clause (b) of this proviso, "substantial variation" means increase in the total cost of the draft scheme by more than 20

per cent or two lacs of rupees whichever is higher, on account of the provisions of new works or the reservation of additional sites for public purposes included in the final scheme drawn up by the Arbitrator.

(4) The Arbitrator shall decide all matters referred to in Sub-section (3) within a period of twelve months from the date of his appointment, and in the case of an Arbitrator appointed under the Bombay Town Planning At, 1955 (Bom. I of 1915) or a Town Planning Officer appointed under the Bombay Town Planning Act, 1954, (Bombay XXVI of 1955) whose appointment is continued u/s 165, within a period of twelve months from the date of the commencement of this Act;

Provided that, the State Government may, if it thinks fit, whether the said period has expired or not, and whether all the matters referred to in Sub-section (3) have been decided or not, extend from time to time by a notification in the Official Gazette the period for deciding all matters referred to in that Sub-section (3) or any extended period therefore."

An appeal is provided against the order of the arbitrator u/s 74 of the Act. Section 74 reads as under,

74. Appeal - (1) Any decision of the Arbitrator under Clauses (iv) to (xi) both inclusive and Clauses (xiv), (xv) and (xvi) of Sub-section (3) of Section 72 shall be forthwith communicated to the party concerned including the Planning Authority; and any party aggrieved by such decision may within two months from the date of communication of the decision apply to the Arbitrator to make a reference to the Tribunal of Appeal for decision of the Appeal.

(2) The provisions of Sections 5, 12 and 14 of the Indian Limitation Act, 1963 (36 of 1963) shall apply to appeals submitted under this section."

Under Section 86 of the Act, the State Government requires to give the sanction to the final scheme as finalized by the Arbitrator within a period of four months from the date of the receipt of the final scheme from him. The said Section 86 reads as under:

86. Sanction by State Government to final scheme -

(1) The State Government may, within a period of four months from the date of receipt of the final scheme u/s 82 from the Arbitrator or within such further period as the State Government may extend, by notification in the Official Gazette, sanction the scheme or refuse to give such sanction provided that in sanctioning the scheme the State Government may make such modifications as may in its opinion be necessary, for the purpose of correcting an error, irregularity or informality.

(2) If the State Government sanctions such scheme, it shall state in the notification

(a) the place at which the final scheme is kept open to inspection by the public and also state therein that copies of the scheme or extracts there from certified

to be correct shall on application, be available for sale to the public at a reasonable price;

(b) a date (which shall not be earlier than one month after the date of the publication of the notification) on which all the liabilities created by the scheme shall take effect and the final scheme shall come into force;

Provided that, the State Government may, from time to time, postpone such date, by notification in the Official Gazette, by such period, not exceeding three months at a time as it thinks fit.

(3) On and after the date fixed in such notification, a town planning scheme shall have effect as if it were enacted in this Act."

Section 88 provides for effect of the final sanctioned scheme and the provisions of Section 88 reads as under:

88. Effect of final scheme. -On and after the day on which a final scheme comes into force

(a) all lands required by the Planning Authority shall, unless it is otherwise determined in such scheme, vest absolutely in the Planning Authority free from all encumbrances;

(b) all rights in the original plots which have been reconstituted shall determine, and the reconstituted plots shall become subject to the rights settled by Arbitrator;

(c) the Planning Authority shall hand over possession of final plots to the owners to whom they are allotted in the final scheme.

Thereafter, we come to the provisions of Section 126 of the said Act which is the subject matter of interpretation in the present petition. However, before setting out Section 126 it is necessary to consider the placement of the said provisions under the scheme of the Act. This provision falls under Chapter VII. The said Chapter VII comprises of Sections 125 to 129 of the said Act. These provisions appears are after the provisions for Development Plan and the provisions of the Town Planning Scheme under the said Act. In our view, the provisions of Section 125 to 129 forms a part of one scheme pertaining to acquisition and/or lapse of reservation of the property which are earmarked for public purpose. For the purposes of the present petition, it is suffice to reproduce the provisions of Sections 125, 126 and 127 of the said Act which read as under:

125. Compulsory acquisition of land needed for purposes of Regional plan, Development plan or town planning scheme, etc. -Any land required, reserved or designated in a Regional Plan, Development Plan or town planning scheme for a public purpose or purposes including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 (I of 1894).

126. Acquisition of land required for public purposes specified in plans. -(1) When after the publication of a draft Regional plan, a Development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the Planning Authority, Development Authority or as the case may be, any appropriate Authority may, except as otherwise provided in Section 113-A, acquire the land

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

(b) in lieu of any such amount, by granting the landowner or the lessee, subject, however, to the 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 on the basis of the principles laid down in the Land Acquisition Act, 1894 Floor Space Index (FSI) or Transferable Development Rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional Floor Space Index or Transferable Development Rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or

(c) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894, 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 section or under the Land Acquisition Act, 1894, as the case may be, shall vest in the Planning Authority, Development Authority, or as the case may be, any Appellate Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or if the State Government (except in cases falling u/s 49 and except as provided in Section 113A) itself is of opinion that any land in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in Section 6 of the Land Acquisition Act, 1894, (I of 1994), in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section;

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

(3) On publication of a declaration under the said Section 6, 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 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 areas as an undeveloped area, and

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

Provided that, nothing in this Sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra Town Planning (Second Amendment) Act, 1972 (Mah. XI of 1973).

Provided further that for the purpose 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 Town Planning (Second Amendment) Act, 1972 (Mah. XI of 1973) shall be the market value prevailing on the date of such commencement.

(4) Notwithstanding anything contained in the proviso to Sub-section (2) and in 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 at the commencement of the Maharashtra Regional Town Planning (Amendment) Act, 1993, (Mah. X of 1994) the State Government may make a fresh declaration for acquiring the land under the Land Acquisition Act, 1894 (I of 1894) in the manner provided by Sub-section (1) 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.

12. Section 72 of the M.R.T.P. Act provides for the appointment of an Arbitrator and requires him to determine various rights of the parties under the Town Planning Scheme. Such an appointment has to be made within one month from the date on which the sanction of the Government to the draft scheme is published in the Official Gazette. The State Government shall for the purposes of one or more planning scheme received by it for sanction, appoint any person possessing such qualification as may be prescribed, to be an Arbitrator and his duties shall be as discussed u/s 72 of the M.R.T.P. Act. The Arbitrator is thereafter required to compute the compensation for the purpose of receiving the same from the plot owners if they have been the beneficiaries under the scheme by way of developed plot of land and/or to pay the owners the compensation, if they have been deprived of their rights in respect of their original plots or any

part thereof. While determining the rights u/s 72(3), the Arbitrator is required to estimate the value of the original plot as well as final plot and fixed the difference between the original and final plot and such difference is required to be included in the final scheme in accordance with the provisions contained in Clause (f) of Section 97(1) of the M.R.T.P. Act. The Arbitrator is also required to estimate the compensation which will be payable for the loss of the area of the original plot in accordance with the provisions contained in Clause (f) of Section 97 (1). Thus, u/s 72 of the M.R.T.P. Act, the Arbitrator exercises and undertakes the valuation of the original plot, the price of the final plot which will be the market value, after taking into account the benefits deprived by such final plot holder. Thereafter, the provisions of appeal are prescribed u/s 74 before the Tribunal and in the event there is a dispute about the compensation fixed by the Arbitrator, an appeal could be filed.

13. In the instant case, the scheme has been sanctioned by the State Government on 15/7/1989 and it has been brought into force from 15/9/1989. The suit plot has been shown to be reserved for the Municipal School in the said scheme. We, therefore, called upon the learned Counsel for the Municipal Corporation to place before us the details regarding the appointment of the Arbitrator by the State Government after the scheme was sanctioned on 15/7/1989 and the subsequent arbitration proceedings, including the award passed by him in respect of the suit plot so as to compute the compensation payable/receivable u/s 72 of the M.R.T.P. Act in respect of the suit plot. No such record or a copy of the award is placed before us either by the Corporation or the State Government. Even in the affidavit filed on behalf of the State Government, there is not statement that an Arbitrator was appointed after 15/7/1989 and the suit plot was a subject matter of the arbitration proceeding held thereafter and the compensation was calculated and offer to the petitioner as required u/s 72 of the Act.

However, the learned Counsel for the Corporation has placed before us report of the Town Planning Scheme No. III (Final) and the said report was prepared by Shri M.I. Patel who was appointed as the Arbitrator vide Government notification dated 29/7/1976 and he had prepared the report on 17/12/1981 and the same was submitted to the State Government for sanction. The said report indicates that the State Government had accorded sanction to the Town Planning Scheme, Pune, No. III (Draft) under Government Resolution dated 13th October, 1934 and the same was published in the Government Gazette on 18th October, 1934. The General Body of the Municipal Corporation had accorded sanction to the Draft Scheme under its Resolution No. 450 dated 12/3/1935 and the same was published and public objections were invited through the newspapers. On 1/4/1943 the State Government sanctioned the Draft Scheme and appointed Shri J.B. Soparkar, Consulting Surveyor to the Government of Bombay, as the Arbitrator for finalizing the said scheme. On the retirement of Shri Soparkar, Shri V.K. Bakre was appointed as an Arbitrator and on his retirement Smt. Jyotsna Choubal worked as an Arbitrator from 11/10/1975 to 23/5/1976. She was

transferred and Shri M.I. Patel took the charge as Arbitrator and passed his award on 27/1/1977. The said award does not include the suit plot.

The arbitration proceeding book placed before us shows that on 29/6/1963 Shri B.B. Bhajekar, Owner of O.P. No. 109 was present before the Arbitrator and had presented an application requesting for one month's adjournment with a view to submit all his objections and suggestions. Arbitration proceedings were subsequently held on 27/7/1963, 17/8/1963 and 7/9/1963. The proceedings of 7/9/1963 indicate that the suit plot was referred to as Final Plot No. 103 for the first time and the case was adjourned to 5/10/1963. On 25/4/1964, the following decision is recorded by the Arbitrator,

CTS No. 1101 - C.P. No. 109 - F.P. No. 103.

To change except that on the South side the existing hassed lane is indented by amalgamating a strip from the land according to the Draft Scheme proposals.

Proposal confirmed. The plot is reserved for Municipal School.

F.P. No. 103 - Local Authority for School.

The proceeding book thus supports the contentions of Mr. Pungaliaya, the learned Counsel for the petitioners that in the arbitration proceedings the plots were reconstructed and old Plot No. 109 was named as Final Plot No. 103 and in the process of reconstruction of the said plot, some area was lost and the land owner i.e. the predecessor of the petitioners was paid compensation of Rs. 2000/-.

14. In these obtaining circumstances, the contentions of the Municipal Corporation that the suit plot was a subject matter of arbitration proceedings and an award came to be passed by the Arbitrator computing its compensation payable to the petitioners are unsustainable. It was submitted on behalf of the Corporation that pursuant to the award passed, the petitioners' predecessor was offered compensation and the same was not received. It was further claimed that in any case, pursuant to the award passed by the Arbitrator, the suit plot is vested with the Corporation free of any encumbrances and, therefore, the petitioners' have no title to seek any relief, as prayed for, in this petition. For the reasons stated hereinabove, we reject all these contentions and we hold that the suit plot has not finally vested in the respondent - Municipal Corporation within the meaning of Section 88 of the M.R.T.P. Act. Unless it was proved before us, on the basis of the material / documents, that after the Town Planning Scheme was sanctioned on 15/7/1989, an Arbitrator was appointed and arbitration proceedings were held in respect of the suit plot, compensation was computed and offered to the petitioners, the respondent - Corporation cannot rely upon the provisions of Sections 88, 89 and 90 of the M.R.T.P. Act and claim to have become the absolute owner of the suit plot.

15. Section 59 (1) of the M.R.T.P. Act states that subject to the provisions of the Act or any other law for the time being in force, a Planning Authority for the

purpose of implementing the proposals in the Final Development Plan prepared one or more Town Planning Schemes for the area within its jurisdiction or any part thereof and the Town Planning Scheme may make provisions for any of the matter listed in Clause (b) there under. Relying upon these provisions, it was submitted by Mr. Pungaliya that the Town Planning Scheme sanctioned on 15/7/1989 cannot supersede the Development Plan sanctioned by the State Government on 1/5/1987 and, therefore, the reservation in respect of the suit plot as shown in the sanctioned Development Plan must prevail over the reservation shown in the Town Planning Scheme approved by the State Government. He pointed out that a Town Planning Scheme is meant for implementing the proposals in the Final Development Plan and there could be no conflict between the two. If any reservation shown in the Final Development Plan was required to be changed, the process, as envisaged, u/s 37 of the M.R.T.P. Act is required to be followed and admittedly, such a proposal was submitted by the respondent - Corporation to the State Government and the same has not yet been approved.

The issue raised by Mr. Pungaliya about the validity of the Planning Scheme in conflict with the sanctioned Development Plan is no more *res integra*. A Division Bench of this Court in the case of *Rusy Kapadia and Ors. v. State of Maharashtra and Ors.* [Writ Petition No. 2087 of 1993 decided on 4/9/1997] held as under:

One of the submissions canvassed by the learned Counsel is that before the Development Plan came into being some time in 1943 the land in question was shown in the Town Planning Scheme of Pune. The Town Planning Scheme u/s 86 was sanctioned some time in 1989. According to the learned Counsel this is subsequent to the sanction of Development Plan and as such the Town Planning Scheme will prevail over the Development Plan. Initially this submission was canvassed by the learned Counsel for the Government, Mr. Zambre. However, they could not pursue it. It was then reiterated by Mr. Anturkar with more force that the Town Planning Scheme will have sway over the Development Plan. We heard and also perused the provisions with the assistance of the learned Counsel for the parties. Town Planning Scheme is provided and dealt with Chapter V of the Act. This Chapter has beginning with Section 59 and opening of the section itself refers that the provisions of this Chapter are subject to the provisions of the Act. The provisions precedent to Section 59 are from Section 1 to Section 58 which include Section 31, Sub-section (6) which proclaims that the Draft Plan is final and binding on the Planning Authority. As such the binding force would carry even when they any way deal with the Town Planning Scheme. Beside this Section 39 and Section 42 of the Act unequivocally indicate that the Development Plan has to definitely prevail over anything and everything including the Town Planning Scheme. In view of this, the submission is without any merit.

In the subsequent decision in the case of *Vijay Krishna Kumbhar v. State of Maharashtra and Ors.* 2000 102 Bom. L.R. 328, following the law laid down in the

case of Rusy Kapadia (Supra), another Division Bench of this Court held as under:

152. We are of the view that the proposition, that in the event of a conflict between the provisions of the Development Plan and the Town Planning Scheme, the former would prevail, is clearly laid down in the judgment in Rusy Kapadia and Ors. v. State of Maharashtra and Ors. (Per A.A. Desai and S.S. Parkar, JJ.) and not in the two authorities to which our attention was drawn. We, therefore, reject the contention of the learned Counsel that the judgment in Rusy Kapadia (supra) is per incuriam....

160. Section 56 is another indicator of legislative intent. It provides that, even when authorised development or use of land is resorted to, if the Planning Authority thinks that it is expedient in the interest of proper planning of its areas, having regard to the Development Plan prepared that there should be a change or discontinuance of the authorised conditions of the structures already put up on the land should be dismantled, then the Planning Authority is empowered to do so, subject, of course, to the right of appeal and the right to compensation as dealt with in the section. We are of the view that the Division Bench of A.A. Desai and S.S. Parkar, therefore, rightly observed that the opening words of Section 59 "subject to the provisions of this Act" necessarily meant subject to the gamut of provisions of Sections 1 to 58 of the Act. In fact, it would appear to us that, barring the solitary provision of Section 39, there is no other provision in the Act dealing with the situation as to what happens when there is already an existing Town Planning Scheme and a final Development Plan containing proposals in variation or modification of those contained in the existing Town Planning Scheme is made. This section is also an indicator, in our view, since it unhesitatingly declares that it shall be the duty of the Planning Authority to alter the existing scheme suitably by resorting to Section 92 to the extent necessary by the proposals made in the final Development Plan.

In the case of Shri S.A. Waghole v. State of Maharashtra and Ors. [Writ Petition No. 4780 of 1995 decided on 31/8/2004], yet another Division Bench of this Court followed the law laid down in the case of Rusy Kapadia (Supra) and held that in case of conflict in reservation between the Development Plan and Town Planning Scheme, the reservation shown in the Final Development Plan shall prevail. Thus, following the consistent view taken by this Court, we hold that in the instant case the reservation in respect of the suit plot made in the sanctioned Development Plan i.e. "Parking Place" shall prevail over the reservation shown in the Town Planning Scheme sanctioned subsequently i.e. for "Municipal School" and hence the contentions of the respondent - Corporation that the suit plot is reserved for Municipal School stands rejected and unless its proposal submitted u/s 37 (either pending or submitted in future) is approved by the State Government for changing the reservation from "Parking Place" to "Municipal School", the reservation shown in the sanctioned Development Plan shall prevail.

16. On the issue of delays and laches, the learned Counsel for the Municipal Corporation relied upon the decision in the case of Municipal Corporation of

Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, . In that case the petitioners had approached the High Court after a delay of four years and that too after the award was made and possession was taken over from the owner in respect of the acquired land. The declaration was published on 3/5/1979 and the award was passed on 24/2/1983. The possession was taken over on 4/3/1983 and on the same day it stood transferred to the Bombay Municipal Corporation. The writ petition came to be filed on 4/7/1983 and it was dismissed by the learned Single Judge on the ground of laches. The Supreme Court held that the exercise of power under Article 226 of the Constitution, after the award was passed, was wrongly made and the delay caused in passing the award was not a ground to quash the acquisition proceeding. In para 29 of the said Judgment, it was stated as under:

29. It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification u/s 4(1) and declaration u/s 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party rights were created in the case is hardly a ground for interference....

The above findings of the Supreme Court are in relation to a petition challenging the land acquisition proceedings after the award was passed and possession of the subject land was handed over to the Municipal Corporation. In the instant case, the Municipal Corporation claims to have the possession of suit plot on 13/5/1999 pursuant to the notice dated 2/12/1997. Thereafter the Corporation passed Resolution No. 94 on 29/6/2000 proposing to hand over the suit plot to a society by name Vasantdada Seva Sanstha for a period of 30 years for construction of a school building. The petition has been filed on 2/2/2001. At no point of time before the petition was filed, the Corporation had intimated in writing to the petitioners or their predecessor that it had taken over possession of the suit plot on 13/5/1999. At the same time, the notice dated 2/12/1997 was challenged by one Shri Narayan Kakade (a tenant on part of the suit plot) in Regular Civil Suit No. 1088 of 1998 and the said proceedings came to an end when Civil Revision Application No. 446 of 1999 was rejected by a Single Bench of this Court on 5/5/1999. The Municipal Corporation submitted a proposal for change of reservation i.e. from "Parking" to "Municipal School" for approval to the Government of Maharashtra u/s 37 of the M.R.T.P. Act vide its letter dated 24/12/2000. Thus, to challenge the alleged possession of the suit plot by the Municipal Corporation as well as the contention of the Municipal Corporation that the suit plot has vested in its favour absolutely, it cannot be said that the petition has been filed belatedly or it suffers from delays and laches. The law laid down by the Supreme Court in the case of Municipal Corporation of Greater Bombay

(Supra) is not applicable in the instant case and hence the contention of the Corporation that the petition deserves to be dismissed on the ground of delays and laches must fail. Even otherwise, when the petition was admitted on 13/7/2001, the issue of delay or laches was not left open to be adjudicated.

17. Along with the additional affidavit, the petitioners have filed the property card issued on 11/7/2007 by the City Survey Office in respect of the suit plot. The said property card shows that the petitioners and their predecessors have been and continued to be owners of the suit property from 1933 onwards and the last entry made was on 16/6/1977 showing the petitioners as the owners. This entry has not been changed till this date and thus there is no change in the ownership of the suit plot. The said record shows that the ownership of the plot continues with the petitioners as of now. The State Government has supported the stand of the Municipal Corporation that the suit plot has vested with the Municipal Corporation absolutely. The foundation of these contentions is based on two factors, namely, (a) the Arbitrator has passed an award u/s 72 of the M.R.T.P. Act computing the compensation payable and the said compensation amount was offered to the petitioners and (b) the Town Planning Scheme approved on 15/7/1989 prevails over the Development Plan sanctioned on 5/1/1987. On both these counts we have held against the Municipal Corporation. The notice dated 2/12/1997 seeking possession of the plot is squarely based on the Corporation's belief that the Town Planning Scheme sanctioned on 15/7/1989 prevails. We are dealing with the case where a public body like a Municipal Corporation claims to have become absolute owner of a prime property in the heart of the city and that too without paying compensation or resorting to acquisition proceedings within the meaning of Section 126 of the M.R.T.P. Act. The claim of the Corporation that it has become the absolute owner of the suit plot, in the facts of this case, is in violation of the guarantee under Article 300A of the Constitution. Repeated opportunities were provided to the learned Counsel for the Corporation and that too at his request to place before us a copy of the award passed by the Arbitrator determining the compensation amount payable to the petitioners in respect of the suit plot and no such award was placed before us. Mr. Pungaliya the learned Counsel for the petitioners is, therefore, right in his contention that no such award was passed after the Town Planning Scheme was approved on 15/7/1989. We have also noted earlier that the record placed before us does not indicate that any such award was passed by the Arbitrator in respect of the suit plot. The learned Counsel for the Corporation persistently relied upon a copy of the Redistribution and Valuation Statement and submitted that the said statement is a proof of the award having been passed by the Arbitrator. We have perused the said statement. In the second column therein, the name of the petitioners is shown as the owners of Final Plot No. 103. In Column No. 5 the area of the plot i.e. Plot No. 109 has been shown to be 2375.51 sq.mtrs., whereas as per Column No. 8, area of Final Plot No. 103 is shown to be 2306.59 sq.mtrs. Whereas the property card brought on record by the petitioners shows that the original plot admeasured 2724.9 sq.mtrs. There is not dispute that Final

Plot No. 103 admeasures 2306.59 sq.mtrs. The said statement cannot be, even by any stretch of imagination, read as the document vesting the suit plot absolutely in the respondent -Corporation. Even otherwise, when the Development Plan sanctioned on 5/1/1987 prevails over the Town Planning Scheme sanctioned on 15/7/1989, as has been held by us, the vesting of the suit plot in favour of the Municipal Corporation, purportedly on the basis of the Arbitrator's award, does not arise and, therefore, the basic foundation of the impugned notice of possession dated 2/12/1997 and the alleged paper possession of 13/5/1999 stands demolished.

18. In the premises, this petition succeeds partly and we hold that,

(a) The reservation of the suit plot for "Parking" as set out in the Development Plan sanctioned on 5th January, 1987 prevails over the reservation for "Municipal School" as shown in the Town Planning Scheme, sanctioned on 15th July, 1989.

(b) The suit plot continues to be the property of the petitioners and it has not vested in the Corporation within the meaning of Section 88 and consequently the Corporation did not have the power to issue the impugned notice dated 2/12/1997 u/s 89 of the M.R.T.P. Act.

(c) The possession of the suit plot purportedly taken over by the Corporation on 13/5/1999 is illegal and void ab initio and hence it is set aside. Consequently, the suit plot continues to be in possession of the petitioners, all along.

(d) The suit plot continues to be reserved for "Parking" as per the sanctioned Development Plan and so long as the reservation continues, the plot could be acquired by following the procedure u/s 126 of the M.R.T.P. Act. The said reservation is, of course, subject to variation by the Government of Maharashtra on a proposal submitted or to be submitted by the Corporation u/s 37 of the M.R.T.P. Act.

(e) The suit plot is not available to the petitioners for development so long as it continues to be reserved for the public purpose and this does not take away the right of the petitioners u/s 127 of the M.R.T.P. Act, if so available.

Rule is made absolute in terms of the above findings. Parties to bear their own costs.