Municipal Corporation of Greater Bombay

Vs

Industrial Development Investment Co. Pvt. Ltd. and Others

Civil Appeal No. 286 of 1989

(K. Ramaswamy, S. B. Majmudar JJ)

06.09.1996

JUDGMENT

K. RAMASWAMY, J. –

1. This appeal by special leave arises from the judgment and order dated 14-7-1988 in Appeal No. 120 of 1988 of the Bombay High Court reversing the judgment and order of the learned Single Judge and quashing the award passed under Section 11 of the Land Acquisition Act, 1894 (for short, 'the Act') and the notification dated 6-9-1972 issued under Section 6 of the Act read with Section 126(2) of the Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) (for short, the 'MRTP Act') as inoperative. It was also held that the land in question could not be acquired under the Act. It was also further declared that all steps taken for taking possession and vesting of plot of land bearing CS No. 503, Dharavi Division, Bombay, in pursuance of the said award were illegal.

2. A few relevant facts leading to these proceedings deserve to be noted at the outset. On 6-1-1967 a draft development plan for 'G' Ward of the Bombay Municipal Corporation was sanctioned by the State of Maharashtra in exercise of its powers under Section 31 sub-section (1) of the MRTP Act. The said draft development plan was earlier prepared by the then planning authority, namely, the Municipal Corporation of Bombay as per the provisions found in Chapter III of the MRTP Act dealing with the preparation, submission and sanction to development plan. It is not in dispute between the parties that necessary gamut enjoined by Sections 21 to 30 of the MRTP Act was gone through by the then planning authority functioning under the Act and that ultimately culminated into the sanctioned draft development plan by the State Government under Section 31(1) of the MRTP Act as aforesaid. This sanctioned draft development plan for 'G' Ward of the Municipal Corporation of Bombay came into force on 7-2-1967. It is also not in dispute between the parties that City Survey No. 503 Dharavi with which we are concerned in the present proceedings formed a part of the said Ward 'G' and, therefore, was naturally covered by the aforesaid sanctioned development plan. The said City Survey Plot No. 503 Dharavi is a large piece of land owned by the sixth respondent, the Provident Investment Co. Ltd. which belongs to the Government of Madhya Pradesh. Some portion of the said land, to be precise an area admeasuring 20,397 sq. yds. was leased out by the fifth respondent to the first respondent herein. It was using the same for the business of manufacture of art silk and rayon textiles and processings of textiles. The appellant, Municipal Corporation of Greater Bombay which was original third respondent in the writ petition has a Sewage Purification Plant at Dharavi. With the increase in the population and the area under control of the appellant-Corporation it became necessary to extend the Dharavi Sewage Purification Works. In the year 1963, it was decided at a meeting of the Standing Committee of the appellant-Corporation to acquire City Survey No. 503. The said requisite proposal was taken note of in the aforesaid Development Plan prepared under the MRTP Act. In the said plan, City Survey No. 503

was designated and shown as reserved for extension of the Dharavi Sewage Purification Works. As noted above, the said plan came into force w.e.f. 7-2-1967. On the basis of the aforesaid reservation of this land in the said plan for the extension of Dharavi Sewage Purification Works belonging to the appellant-Corporation, the appellant-Corporation, being the then planning authority sought to acquire the said land for the purpose of extension of Dharavi Sewage Purification Plant as per Section 126(1) of the MRTP Act and the State Government of Maharashtra being satisfied that the land specified in the application was needed for the public purpose therein specified, issued the requisite notification dated 6-7-1972 under Section 126(2) of the MRTP Act read with Section 6 of the Act. The said provisions of Section 126 read as under :

> "126. (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) either by agreement or make an application to the State Government for acquiring such land under the Land Acquisition Act, 1894.
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> (2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or if the State Government (except in cases falling under Section 49 and except as provided in Section 113-A) itself is of opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in Section 6 of the Land Acquisition Act, 1894, 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 :
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> Provided that, no such declaration shall be made after the expiry of three years from the date of publication of the draft Regional plan, Development plan or any other plan."

3. Pursuant to the said notification notices under Section 9 of the Act were issued on 14-3-1973 to the interested parties concerned inviting claims for compensation. As Respondents 1 and 2 were in possession of the land as tenant, they naturally put forward their claims for compensation. It is in evidence that in 1979, Respondents 1 and 2 were also heard in support of their claim petition seeking appropriate compensation for acquisition of their rights over the land sought to be acquired.

4. In the meantime, two important events took place which have a direct bearing on the result of these proceedings. On 26-1-1975 an Act called the Bombay Metropolitan Region Development Authority Act, 1974 (4 of 1975) (hereinafter referred to as "BMRDA Act") came into force. That was an Act for forming Greater Bombay and certain areas roundabout Bombay Metropolitan Region, to provide for the establishment of an authority for the purpose of planning, coordinating and supervising the proper, orderly and rapid development of the area in that region and of executing plans, projects and schemes for such development, and to provide for matters connected therewith. As per Schedule 1 of the said Act, the Bombay Metropolitan Region consisted of the whole of the area of Greater Bombay in parts of Thane and Colaba districts within the specified boundaries. It is not again in dispute between the parties that the aforesaid City Survey No. 503 Dharavi got covered by the Bombay Metropolitan Region as indicated in the said Schedule. Under

the BMRDA Act, as per Section 3, the State of Maharashtra constituted an authority named as Bombay Metropolitan Region Development Authority (hereinafter referred to as 'BMRDA'). As per Section 3, sub-section (3) of the said Act, the said Metropolitan Authority was to be deemed to be a local authority within the meaning of the term "local authority" as defined by the Bombay General Clauses Act, 1904 (1 of 1904). As per Chapter IV of the BMRDA Act, diverse functions were to be performed by the said authority. The said BMRDA had, under Section 12(1)(c), to formulate and sanction schemes for the development of the Metropolitan Region or any part thereof. Under the MRTP Act, the term "planning authority" was defined by Section 2 sub-section (19) to mean a local authority and it included a Special Planning Authority constituted or appointed under Section 40 of that Act. On coming into force of the BMRDA Act, the State Government exercising its power under Section 40 sub-section 1(c) of the MRTP Act had appointed BMRDA as a Special Planning Authority for development of the notified area, namely, the metropolitan area notified under the BMRDA Act. The said notification was issued by the State of Maharashtra on 26-1-1975.

5. As per sub-section (3) of Section 40 of the MRTP Act, on the constitution of the aforesaid planning authority for the metropolitan area of Bombay the provisions of Chapter VI of the MRTP Act dealing with 'New Towns' got attracted for operation by the said Special Planning Authority, i.e., BMRDA. By a notification dated 31-3-1977 issued by the Urban Development and Housing Department of the Maharashtra Government the State Government appointed BMRDA to be the Special Planning Authority for Kurla Taluq in Bombay sub-district and Dharavi area of the Bombay city as they were in a neglected condition and needed to be planned and developed in a comprehensive manner. In exercise of its powers under Section 40 sub-section (3)(d) read with Section 115 of the MRTP Act, it submitted to the State Government its proposals for the development of the area put under its planning jurisdiction, after following the procedure prescribed therein on 7-3-1977 for the approval. It is again not in dispute between the parties that the City Survey No. 503 Dharavi was covered by the said notification. Once these proposals for development of the area known as Bandra-Kurla complex were received by the State Government after the Special Planning Authority had followed the procedure of Section 115 sub-section (2) of the MRTP Act read with Section 40 sub-section 3(d) of the said Act, after due consideration given by the State Government, the said proposals were approved by the State Government as per Section 115 sub-section (2) of the MRTP Act read with Section 40 sub-section (3)(d) on 19-4-1979 and they were published as per Section 40 sub-section (5) of the MRTP Act in Government Gazetted on 3-5-1979 and accordingly they became final.

6. Section 40 of the MRTP Act with its relevant sub-sections reads as under :

> "40. (1) The State Government may, by notification in the Official Gazette, for any undeveloped area specified in the notification (in this Act referred to as 'the notified area') either -
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> #(a)-(b) * * *##
>
> or
>
> (c) appoint the Bombay Metropolitan Region Development Authority established under the Bombay Metropolitan Region Development Authority Act, 1974, to be the Special Planning Authority for developing the notified area.
>
> #(2) * * *##

(3) On the constitution of the Special Planning Authority, the provisions of Chapter VI of this Act shall, subject to the provisions of this section and Section 41, apply mutatis mutandis to the Special Planning Authority as they apply in relation to a Development Authority, as if the notified area were a new town, subject to the following modification, namely :

#(a)-(c) * * *##

(d) for Section 115 the following shall be substituted, namely :

'115. (1) A Special Planning Authority shall, from time to time submit to the State Government its proposals for the development of land (being land either belonging to, or vesting in, it or acquired or proposed to be acquired under Section 116), and the State Government may, after consultation with the Director of Town Planning, approve such proposals either with or without modification.

(2) Before submitting the proposals to the State Government, the Special Planning Authority shall carry out a survey and prepare an existing land-use map of the area, and prepare and publish the draft proposals for the lands within its jurisdiction together with a notice in the Official Gazette and local newspapers in such manner as the Special Planning Authority may determine, inviting objections and suggestions from the public within a period of not more than 30 days from the date of notice in the Official Gazette. The Special Planning Authority may, if it thinks fit, give individual notices to persons affected by the draft proposals.

(3) The Special Planning Authority may after duly considering the objections or suggestions, received by it, if any, and after giving an opportunity to persons affected by such draft proposals of being heard modify its proposals, if necessary, and then submit them to the State Government for its approval. The orders of the State Government approving such proposals shall be published in the Official Gazette.';

(e) for Section 116, the following shall be substituted, namely :

'116. Every Special Planning Authority shall have all the powers of a Planning Authority under this Act as provided in Chapter VII for the purposes of acquisition of such land in the notified area as it considers to be necessary for the purpose of development in that area either by agreement or under the Land Acquisition Act, 1894, or any land adjacent to such area which is required for the development of the notified area and any land whether adjacent to that area or not which is required for provision for services or amenities for the purposes of the notified area.';

(f) for Section 117, the following shall be substituted, namely :

'117. Where any land has not been acquired within a period of ten years from the date of a notification under sub-section (1) of Section 40, any owner of the land may, by notice in writing served on the Special Planning Authority, require it to acquire his interest therein; and thereupon, the provisions of Section 127 providing for lapsing of reservations shall apply in relation to such land as they apply in relation to land reserved under any plan under this Act.';

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(4) In preparing and submitting its proposals for developing any land under Section 115 and in approving them under that section, the Special Planning Authority and the State Government shall take particular care to take into consideration the provisions of any draft or final Regional plan, draft or final development plan, or any draft or final town planning scheme, or any building bye-laws or regulations, which may already be in force in the notified area or in any part thereof.

(5) Where any proposals for development of any land are approved by the State Government under Section 115, the provisions of the proposals approved by the State Government shall be final, and shall prevail, and be deemed to be in force, in such notified area; and to that extent the provisions of any such plan or scheme applicable to and in force in the notified area or any part thereof shall stand modified by the proposals approved by the State Government."

7. A conjoint reading of the aforesaid provisions would show that by 3-5-1979 instead of the original sanctioned draft development special plan for 'G' Ward which was holding the field from 7-2-1967 a new development general plan for Bandra-Kurla area became operative. As noted earlier, City Survey No. 503 Dharavi which was earlier under the 'G' Ward of Bombay Municipal Corporation and was covered by Sanctioned Development Plan of 6-1-1967 now got covered by the Bandra-Kurla Complex plan as per the new Sanctioned Development Plan for Bandra-Kurla Complex, the earlier reservation made in connection with City Survey No. 503 Dharavi which was earmarked to be utilised for locating the extended Dharavi Sewage Purification Work got altered and in its place a new area comprising Block 'A' was earmarked for location of a new sewage treatment plant. The said relevant proposal is found in the booklet captioned "Bandra-Kurla Complex" in Chapter VI thereof containing the detailed proposals. So far as Block 'A' is concerned, in paragraph 7.1(v) it has been provided as under :

"(v) The Bombay Municipal Corporation is planning to provide a sewage treatment plant to be located near 'A' Block as recommended by their consultants. All the sewage from Bandra east Kurla etc. will be collected and pumped to this plant and after treatment it will be let into the deep-sea outfall sewer. The present sewage treatment plant at Sion will be discontinued. The requirement for an area of 35 acres, including 5 acres to accommodate housing for essential staff, has been indicated. The purification plant proper will be located west of the 'A' Block by reclaiming at the southern end of the land strip at Bandra. But the five acres of land required for residential purpose for the essential staff is to be made available to the Municipal Corporation from the western portion of Block 'A'. Further reclamation on the west for locating the purification plant will be done by the Bombay Municipal Corporation in consultation with the Central Water and Power Research Station, Khadakvasla, as tentatively shown on the layout plan."

8. This clearly shows that 3-5-1979 onwards this sewage treatment plant was to be located in 35 acres of land reserved under Block 'A' of the said planning proposals. It is, therefore, obvious that Dharavi Sewage Purification Plan had to be dismantled and shifted to Block 'A' at the place indicated for it in the approved plan. So far, the City Survey No. 503, with which we are concerned, went in and was found located under the new proposals in Block 'H'. The existing purification plant of the Bombay Municipal Corporation was found covered by the said Block 'H'. Consequently, the

question of its extension no longer remained feasible or possible for the Municipal Corporation. On the contrary, the entire land of Block 'H' over a part of which the existing sewerage plant was situated was to be used for the purpose shown in the plan attached to the proposals. A mere look at the plan attached to the proposals would show that not only the existing Dharavi Sewage Plant was to be discontinued and shifted to Block 'A' but the land covered by that plan as well as the other lands of Block 'H' which also naturally covered the disputed City Survey No. 503 were to be utilised for residential, commercial, para-commercial and social facilities/purposes. No part of Block 'H' area was reserved for any special public purpose, unlike the earlier reservation of Plot No. 503 Dharavi under 1977 Development Plan.

9. The result was that after 3-5-1979 City Survey No. 503 got de-reserved from the earlier public purpose of locating the extension of Dharavi Sewage Purification Plant and the entire Block 'H' was to be utilised under the new plan for residential, commercial, para-commercial and social facilities by its local residents without any special reservation for the Municipal Corporation. Normally, on its so happening, the earlier notification issued under Section 126 sub-section (2) read with Section 6 of the Act lost its utility, vitality and necessity. As we have seen earlier, Section 126(2) read with Section 126(1) requires as a condition precedent to acquisition of any land which can be proposed under Section 126(1), that there must exist the fact-situation that such land is earmarked, required or reserved for any of the public purposes specified in any plan or scheme under the Act. Section 125 of the MRTP Act states that any land required, reserved or designated in 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. A conjoint reading of Sections 125 and 126(1), therefore, shows that a planning authority can propose acquisition of only that land which is required, reserved or designated in the development plan for any public purposes and it is such a proposal which can be accepted by the State Government under sub-section (2) of Section 126 on being satisfied with the land specified in the application as needed for public purpose specified therein. Consequently, any planning authority proposing action under Section 126(2) by the State Government must show that the land which it is proposing to acquire is required, reserved or designated in the development plan concerned for public purpose and if the land is not so required, reserved or designated in the plan for a public purpose it cannot be subjected to proceedings of acquisition under Section 126(1) read with Section 126(2). Once the specification of public purpose concerning the given land ceases to exist because of the de-reservation under the plan so far as that land is concerned, it cannot be acquired under Section 126(1) read with Section 126(2) for the planning authority by the State Government, without being required, reserved or designated for any public purpose in the revised development plan.

10. It has to be kept in view that Section 126 sub-section (1) of the MRTP Act is a substitute for Section 4 notification under the Act. Once a proposal for acquisition of land earmarked in development plan for a specified public purpose is moved by the planning authority as per Section 126(1), on acceptance of such proposal by the State Government a notification under Section 126(2) read with Section 6 of the Act gets issued. It has to be appreciated that as there is no provision for notification under Section 4 of the Act for such acquisition under the MRTP Act, no Section 5-A enquiry under the Land Acquisition Act is contemplated under the MRTP Act. It is also not necessary to have such an enquiry made after the proposal for acquisition is moved under Section 126(1) of the MRTP Act by the planning authority concerned, for the obvious reason that earmarking of the land concerned for specified public purpose under the development plan, which is the basis of proceedings under Section 126 sub-section (1) of the MRTP Act, is for public purpose and has already been done after hearing objections of persons concerned at the stage of preparation

of the draft development plan.

11. If we turn to Chapter III of the MRTP Act, we find that the entire machinery is provided for preparation, submission and sanction of development plan proceeding from Section 21 and ending with Section 31. These provisions, in short, provide for preparation of draft development plan by the planning authority inviting objections of persons concerned against such proposals, hearing of objections filed by the objectors as per Section 28 sub-section (3) by the Planning Committee and then submitting its report to the planning authority which ultimately gets the proposals approved by the State Government under Section 30. All these provisions do indicate that requirement, designation, reservation or earmarking of any land for acquisition for any specified public purpose as indicated in the plan has already undergone the process of hearing after the objections of the persons concerned were considered and then such land gets earmarked for public purpose in the plan. It is after that stage, therefore, when need to acquire such earmarked, designated or reserved land for public purpose under the plan arises, that Section 126(1) proposal gets issued by the planning authority concerned and which itself becomes a substitute for Section 4(1) notification under the Act. It would thus, appear that the scheme of acquisition of earmarked land under the plan for a specified public purpose thereunder, is a complete scheme or code under the MRTP Act. It is a distinct and independent scheme as compared to general scheme of acquisition under the Land Acquisition Act.

12. In this connection, Section 128 of the MRTP Act also is worth noting. The said section provides that if the State Government wants to acquire lands for any purposes other than the one for which the land is designated in any plan or scheme then it has to resort to notification under the Act which would naturally be followed by Section 5-A enquiry as per the said Act subject to Section 17 of that Act, and then only the State can issue declaration under Section 6 of the said Act independently of the provisions of the MRTP Act. In such cases, as acquisition has no nexus with the development plan, objectors get opportunities to object to such acquisition for the public purpose mentioned in the notification, as Section 5-A of the Act would then get attracted to such objections. Thereafter, if Section 6 declaration is issued by the State Government and if ultimately the land gets vested in the State Government under Sections 16 and 17 of the Act, then as provided by Section 128 sub-section (3) of the MRTP Act, the relevant plan or scheme which includes the land in question shall be deemed to be suitably varied by reason of acquisition of the said land. This provision also would indicate that acquisition as per Section 126 stands on an entirely different footing as compared to acquisition of any land for any public purpose as per the general law of land acquisition, namely, the Land Acquisition Act, 1894.

13. It is, therefore, clear that for the purpose of acquisition of any land under Section 126(2) of the MRTP Act, the land sought to be acquired must have a direct connection with its specification, earmarking or reservation for a specified public purpose in the development plan itself. Such earmarking etc. is its charter. In other words, absence of public purpose would be a fetter on exercise of power of acquisition made under Section 126(2) of the MRTP Act or a truncated public purpose. An exercise of eminent domain derives its efficacy from the reservation, specification or designation for public purpose of the land concerned as found in the development plan itself. If this nexus or linkage between the specification etc. of public purpose in the plan and the land concerned which is sought to be acquired under the MRTP Act is snapped off, prior to the completion of acquisition proceedings as per Section 126(2) of the MRTP Act, the entire edifice of acquisition proceedings under Section 126 would crumble down and the acquisition under that section would become incompetent. Such is not the case of acquisition under the Act simpliciter, which has to start after issue of Section 4 notification. Consequently, by considering the statutory scheme of

acquisition under Section 126 of the MRTP Act, general principle of acquisition under the Act cannot be supplied wholesale for deciding the legality of such statutory acquisition under the special scheme of MRTP Act.

14. On the facts of the present cases, it is not in dispute that on 6-7-1972 when the State of Maharashtra issued requisite notification for acquiring leasehold land of Respondent 1, situated in City Survey No. 503 Dharavi, the said land was duly reserved for a public purpose for extension of Dharavi Water Sewage Plant of the Municipal Corporation as earmarked in the then Operative Sanctioned Development Plan of 6-2-1967. Therefore, on 6-7-1972, the notification under Section 126(2), MRTP Act read with Section 6 of the Land Acquisition Act published on 6-7-1972 was perfectly valid and operative. However, before acquisition proceedings qua that land pursuant to the said notification could culminate into the award, the said land got de-reserved for that specified public purpose and went out of earmarked purpose. Thus, 3-5-1979 onwards, City Survey No. 503 which was then merged and comprised as Block 'H' of Bandra-Kurla Complex ceased to be reserved for the specified public purpose of being utilised for extension of Sewage Plant of the Bombay Municipal Corporation. Once that happened and it was marked in the approved plan under BMRDA Act for residential purposes etc., ordinarily efficacy of the notification under Section 126(2) qua this land got extinguished and the specified public purpose resultantly died down.

15. It would be necessary to emphasise that to implement the scheme framed and approved by the State Government under the MRTP Act, the land was notified under Section 126 as it was for a public purpose. If the earmarked, designated or reserved land in the subsequent plan prepared and approved under the BMRDA Act, does not subserve any public purpose within the earmarked, designated or reserved public purposes, necessarily, the public purpose envisaged under Section 126 outlives its purpose and gets eclipsed. Public purpose envisaged in original approved plan no longer survives and if the land sought to be acquired is diverted to or earmarked or designated to a private purpose, necessarily remedy must be either under Chapter 7 of the Act or any relevant law or Section 126 as per revised and approved scheme at which stage the owner gets opportunity to submit his objections for consideration before submitting the plan for approval by the State Government. Take, for instance, the self-same land under the approved scheme under the MRTP Act which was purification of sewerage treatment plant. This was a special scheme. In the general scheme, i.e., in Bandra-Kurla scheme, if the said land was earmarked for private purpose, necessarily the original public purpose was eclipsed. Further proceeding for acquisition becomes questionable. Since further proceedings for acquiring the land, in such circumstance, would not be for public purpose but must be for any private purpose unless saved by the special law, i.e., the MRTP Act or BMRDA Act, which is not consistent with the scheme of the Act, fresh notification under Section 126 of the MRTP Act consistent with the revised plan would become necessary. It would, therefore, be necessary for the interested person to be vigilant and watchful to impugn such notification under Section 126 in the High Court under Article 226 before the acquisition becomes final and conclusive under Section 12(1) of the Act between the Collector (Land Acquisition Officer) and the interested person whether or not he appeared or represented before him and the lands stand vested in the State under Section 16 or 17 free from all encumbrances.

16. After the award under Section 11 of the Act was made by the Collector he is empowered under Section 16 to take possession of the land, if the possession was not already taken, exercising power under Section 17(4). Thereupon, the land shall vest absolutely in the Government free from all encumbrances. It is well-settled law that taking possession of the land is by means of a memorandum (panchnama) prepared by the Land Acquisition Officer and signed by panch witnesses called for the purpose. Subsequently, the Collector hands over the same to the beneficiary

by means of another memorandum or panchnama, as the case may be. But in this case Section 91 of the BMC Act statutorily comes into play which would indicate that the Land Acquisition Officer while making award should intimate to the Commissioner, Municipal Corporation of the amount of compensation determined and all other expenses. The Corporation shall pay over the same to the Land Acquisition Officer.

17. By operation of sub-section (2) thereof, the amount of compensation awarded and all other charges indicated in the acquisition of the property shall be paid by the Commissioner; "thereupon the said property shall vest in the Corporation". In other words, on payment of compensation by the Corporation to the Land Acquisition Officer, statutorily the Corporation gets transfer of possession from the State and the acquired property vests in the Corporation free from all encumbrances. Thereby the Corporation becomes the absolute owner of the land free from all encumbrances including tenancy rights, if any, alleged to be held by the respondents.

18. From the facts of this case, it is clear that the owner, a public undertaking of the Madhya Pradesh Government, had received the compensation and handed over the possession to the Land Acquisition Officer on 4-3-1983. The Land Acquisition Officer, thereby, had taken symbolic possession of the land of the fifth respondent-owner. The owner and the respondents had reference under Section 18 which was pending.

19. It would be no function of the Collector (Land Acquisition Officer) to keep inquiring whether the notified public remains in existence. His duty and authority is to pass award under Section 11 after following the procedure under Sections 9 and 10; file the award in the office of the Collector under Section 12(1); issue notice to all interested persons under Section 12(2); pay compensation under Section 31 or deposit it in the Court and to make reference, if the application under Section 18 was filed as per law and this binds his authorities. Therefore, the validity of the notification under Section 126 of the MRTP Act or declaration under Section 6 of the Act needs necessarily to be impugned by interested persons and have it quashed before the award proceedings become final and conclusive under Section 12(1). If the interested person allows the grass to grow under his feet by allowing the acquisition proceedings to go on and reach its terminus in the award and possession is taken in furtherance thereof and vested in the State free from all encumbrances, the slumbering interested person would be told off the gates of the Court that his grievance should not be entertained. On the other hand, if he enlists vigil and avails of the remedy of judicial review before the acquisition proceedings reach finality, necessarily the High Court would enquire whether the public purpose under Section 126 of the MRTP Act was subsisting so as to enable the Land Acquisition Officer to take further steps under Sections 9 and 10 and to make the award under Section 11. This would be so because of the special scheme and special law. But the situation of the acquisition pursuant to a notification published under Section 4(1) of the Act and declaration under Section 6 in this perspective would be different and always stand on a different perspective and is independent of the special scheme envisaged under the MRTP Act or BMRDA Act, as the case may be. One cannot be and should not be confused with another. They stand poles apart. What is required is clarity in thinking process. The confusion would land in miscarriage of justice and avoidable frustration of public purpose. Only one exception in this should be kept in mind, i.e., whether the public purpose envisaged under both the Special Act and the General Act and the use of the acquired land should always be for a public purpose. In this behalf, it is of relevance to note the law laid down by this Court on the diversion of the land acquired for one public purpose and its use thereof for another.

20. In Gulam Mustafa v. State of Maharashtra [(1976) 1 SCC 800], a Bench of three Judges had

held that : (SCC p. 802, para 5)

> "... once the original acquisition is valid and title has vested in the municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the Section 6(3) declaration".

The same view was reiterated by another Bench of three Judges in Mangal Oram v. State of Orissa [(1977) 2 SCC 46] wherein it was held that : (SCC Headnote p. 46)

> "[U]se of land after a valid acquisition for a different public purpose will not invalidate the acquisition."

21. In State of Maharashtra v. Mahadeo Deoman Rai [(1990) 2 SCC 579] yet another Bench of three Judges had held that requirement of public purpose may change from time to time but the change will not vitiate the acquisition proceeding. The authority concerned should review the requirement aspect periodically in the prevailing social context. In Collectors of 24 Parganas v. Lalit Mohan Mullick [(1986) 2 SCC 138] a Bench of two Judges had held that acquisition of the land for a public purpose, namely, the use of the land for rehabilitation of displaced persons, should be altered by subsequent development for another public purpose, namely, for construction of a hospital as per Development and Planning Act. In Ram Lal Sethi v. State of Haryana [1990 Supp SCC 11] the land was acquired for public purpose of construction of road but exigencies of development necessitated allotment of a portion of it to a private company; the allottee company was in possession for 17 years and was not made a party to the litigation; allotment was not shown to be an act of favouritism. It was held by the two-Judge Bench that the acquisition was not vitiated on account of change of the user.

22. It is thus well-settled legal position that the land acquired for a public purpose may be used for another public purpose on account of change or surplus thereof. The acquisition validly made does not become invalid by change of the user or change of the user in the Scheme as per the approved plan. It is seen that the land in Block 'H' which was intended to be acquired for original public purpose, namely, the construction of Sewage Purification Plant, though was shifted to Block 'A', the land was earmarked for residential, commercial-cum-residential purposes or partly for residential purpose etc. It is the case of the appellant that the Corporation intends to use the land acquired for construction of the staff quarters for its employees. It is true that there was no specific plan as such placed on the record, but so long as the land is used by the Corporation for any designated public purpose, namely, residential-cum-commercial purpose for its employees, the later public purpose remains to be valid public purpose in the light of the change of the user of the land as per the revised approved plan. It is true that in the original scheme the residential quarters for the staff working in Sewage Purification Plant were intended to be constructed and the same purpose is sought to be served by the acquisition of the land by using the land in Block 'A'. Nonetheless the acquired land could be used by the Corporation for residential-cum-commercial purpose for its employees other than those working in the Sewage Purification Plant. It would not, therefore, be necessary that the original public purpose should continue to exist till the award was made and possession taken. Nor is it the duty of the Land Acquisition Officer to see whether the public purpose continues to subsist. The award and possession taken do not become invalid or ultra vires the power of the Land Acquisition Officer. On taking possession, it became vested in BMC free

from all encumbrances including tenancy rights alleged to be held by the respondents. Possession and title validly vesting in the State, becomes absolute under Section 10 of the Act and thereafter the proceedings under the Act do not become illegal and the land cannot be revested in the owner. Only before taking possession, the Government can withdraw from inquiry under Section 45(1) of the Act or the High Court under Article 226 of the Constitution may quash it on legal and valid grounds. If the award under Section 11-A was not made within two years from the date of the publication of the declaration under Section 6, as enjoined under Section 11-A of the Land Acquisition Act, whether the notification under Section 4(1) would lapse. This Court in Satendra Prasad Jain v. State of U.P. [(1993) 4 SCC 369] had held that after the land stood vested in the State, even if the authorities failed to comply with the statutory requirements, it does not have the effect on the vesting of land in the State. Thereby the notification under Section 4(1) and the declaration under Section 6 do not stand lapsed. The same view was reiterated by another Bench in Awadh Bihari Yadav v. State of Bihar [(1995) 6 SCC 31]. The High Court, therefore, was not right in exercise of power under Article 226 of the Constitution in granting declarations as mentioned in the beginning or in making order of injunction against the appellants pending writ petitions. It is an equally settled law that a tenant cannot challenge the notification under Section 4 and declaration under Section 6 of the Act when the landlord himself had accepted the award and received compensation.

23. The next question is whether the High Court was right in issuing the writ after a long lapse of time ? The respondents, admittedly, approached the High Court after a delay of 4 years; that too after award was made and possession was taken from the owner. It is seen that the declaration was published as long back as on 3-5-1979. Earlier to that after the draft plan was published, notice was given to all the parties. The respondents, who claim to be the tenants, had not raised the little finger in making any objection to the proposed scheme or the revised plan. The award was made on 24-2-1983; possession was taken on 4-3-1983, and on the same day it stood transferred to the BMC. The writ petition came to be filed thereafter on 4-7-1983. The learned Single Judge dismissed the writ petition on the ground of laches.

24. In State of T.N. v. L. Krishnan [(1996) 1 SCC 250], a Bench of three Judges of this Court had held that

> "the delay in challenging notification was fatal and the writ petitions were liable to be dismissed on the ground of laches".

Exercise of power under Article 226 of the Constitution, after award was made, was held to have been wrongly made. Delay to make award was not a ground to quash the acquisition proceedings.

25. In State of Orissa v. Dhobei Sethi [(1995) 5 SCC 583 : (1995) 5 Scale 188], it was held that on account of laches on the part of the petitioners, the writ petition was liable to be dismissed. It was also held therein that the subsequent purchaser cannot raise any objection for the validity of the acquisition. The High Court was, therefore, held unjustified in issuing the writ and quashing the notification and declaration under Sections 4(1) and 6 respectively.

26. In State of Maharashtra v. Digambar [(1995) 4 SCC 683 : (1995) 4 Scale 98], another Bench of three Judges directed dismissal of the writ petition on the ground of laches and held that the High Court had not judiciously and reasonably exercised its discretion in passing the notification under Section 4(1) of the Act.

27. In Ramjas Foundation v. Union of India [1993 Supp (2) SCC 20 : AIR 1993 SC 852], a Bench of three Judges had held that mere retaining the possession or delay on the part of the authority to pass award are not grounds to challenge the notification under Section 4(1) and declaration under Section 6, and the laches was held to be ground to dismiss the writ petition. Accordingly this Court allowed the appeal and dismissed the writ petition.

28. In Ram Chand v. Union of India [(1994) 1 SCC 44], another Bench of three Judges of this Court had held that because of inordinate delay in approaching the court after the entire process of acquisition was over pursuant to notification under Section 4(1) and declaration under Section 6, the court was not justified in quashing the same. Same view was reiterated in Bhoop Singh v. Union of India [(1992) 3 SCC 136 : AIR 1992 SC 1414], Aflatoon v. Lt. Governor of Delhi [(1975) 4 SCC 285 : AIR 1974 SC 2077], Indrapuri Griha Nirman Sahakari Samiti Ltd. v. State of Rajasthan [(1975) 4 SCC 296 : AIR 1974 SC 2085], H.D. Vora v. State of Maharashtra [(1984) 2 SCC 337] and Girdharan Prasad Missir v. State of Bihar [(1980) 2 SCC 83].

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 under Section 4(1) and declaration under Section 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 Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches.

30. The appeal is allowed with costs quantified at Rs 10,000 (Rupees ten thousand only).

S.B. MAJMUDAR, J. (concurring) - I have gone through the judgment prepared by my esteemed learned brother K. Ramaswamy, J. I respectfully agree with the conclusion to the effect that Respondents 1 and 2 had missed the bus by adopting an indolent attitude in not challenging the acquisition proceedings promptly. Therefore, the result is inevitable that the writ petition is liable to be dismissed on the ground of gross delay and laches.

32. However, I may mention at this stage that observations made by my learned brother K. Ramaswamy, J., in connection with utilisation of land acquired under the Maharashtra Regional Town Planning Act (hereinafter referred to as the 'MRTP Act') for one public purpose to be used for another public purpose, are with great respect not found by me to be apposite. I, therefore, record my reasons for the said view.

33. Even though the proposal under Section 126(1) is for acquisition of land for a specified public purpose, if the planning authority wants to acquire the land subsequently for any other public purpose earmarked in the modified scheme as has happened in the present case that is if the appellant-Corporation which had initially proposed to acquire the land for extension of sewerage treatment plant wanted subsequently to acquire the same land for its staff quarters then such a purpose must be specifically indicated in the plan meaning thereby that the land must be shown to be reserved for the staff quarters of the Corporation and then the Special Planning Authority which had become the appropriate planning authority, i.e., BMRDA would be required to issue a fresh proposal under Section 126(1) read with Section 40(3)(e) and Section 116 of the MRTP Act and

follow the gamut thereafter. So long as that was not done the earlier proposal under Section 126(1) and the consequential notification by the State Government under Section 126(2) which had lost their efficacy could not be revitalised. I also do not subscribe to the general observation that a sitting tenant of the land which comes to be subjected to acquisition proceedings under Sections 4 and 6 of the Land Acquisition Act, in no case can challenge the said acquisition proceedings. In appropriate cases such a challenge can be levelled by the tenant concerned having sufficient subsisting interest in the land. In my view, therefore, on merits the learned Single Judge as well as the Division Bench had rightly held that the respondent's writ petition had good case on merits.

34. However, as the learned Single Judge dismissed the writ petition on the ground of delay and laches and his view was upset by the Division Bench which according to me had not taken a correct view on this score as held by my learned brother K. Ramaswamy, J., and with which view I respectfully concur, I deem it fit to record my additional reasons for non-suiting the respondent-petitioners on that score.

35. It is trite to observe that before the planning proposals for Bandra-Kurla Complex were finalised and published by the State of Maharashtra on 3-5-1979, the requisite statutory procedure of Section 40 sub-section 3(d), was necessarily followed by the Special Planning Authority and that happened between 7-3-1977 and 3-5-1979. To recapitulate as per Section 40 sub-section 3(d) of the MRTP Act before submitting planning proposals to the State Government, the Special Planning Authority has to carry out survey of the land and to prepare existing land-use map of the area, and to prepare and publish the draft proposal for the lands within its jurisdiction together with a notice in the Official Gazette and local newspapers in such manner as the Special Planning Authority may determine. It has also to invite objections and suggestions from the public within the period of not more than 30 days from the date of notice in the Official Gazette. Thus these proposals are to be published not only in the Official Gazette but in local newspapers also. It is, therefore, obvious that the proposals for changing the reservations of the lands concerned in the area and shifting of the sewage plant from Block 'H' to Block 'A' in the planning proposal for Bandra-Kurla Complex were published by the Special Planning Authority prior to 3-5-1979 and after 7-3-1977 when that authority was constituted. When such proposals got published in local newspapers it is too much for the respondent-writ petitioners to submit that they never knew about these proposals and they came to know about these proposals only on 26-5-1983 when public notice was issued in Times of India regarding the approval of these proposals by the State Government. Even assuming that Respondents 1 and 2 might not have read the Government Gazette at least notices issued in local newspapers would not have escaped their attention in 1979. By 1979, therefore, Respondents 1 and 2 must have known or with due diligence would have known that there was a proposal to de-reserve their land from the earmarked purpose of extension of sewerage treatment plant of the Municipal Corporation. They may not object to such a favourable proposal but obviously they should be inquisitive enough to know as early as between 1977 and 1979 that the cloud on their land was getting lifted. Therefore, they would have been put to the enquiry as to what happened to this proposal and what was the final outcome thereof. Instead of of bothering anyway about it, they just slumbered on and supported their claims for compensation before the Land Acquisition Officer under Section 9 of the Act, joined issued thereon in 1979 and onwards and allowed the award to be rendered as late as on 24-2-1983. Not only that they also allowed the possession to be taken by the Corporation on 4-3-1983 though of course it was symbolic possession as they were tenants in possession. To add to this indolent conduct and connivance on the part of the respondent-writ petitioners, in these very acquisition proceedings, they filed reference application under Section 18 of the Land Acquisition Act on 7-4-1983 claiming additional compensation. Thus up to 7-4-1983 they had no objection to their land which had already got de-reserved for the extension of the

sewage plant from being acquired and they concentrated on compensation only. It is their own case that even on 10-1-1986 there was a meeting of the Bombay Municipal Corporation Works Committee and in that meeting the members present had asked the Dy. Municipal Commissioner to make statement on certain queries raised by him and one of the queries was about absence of proposals to have extension of Sewage Purification Plant, Dharavi. This also shows that Respondents 1 and 2 were fully alive to the fact that there was no scope for extension of Dharavi Sewage Plant on their land. Despite all these facts within the knowledge of Respondents 1 and 2 they sat on the fence and allowed the acquisition proceedings to continue and reach their terminus and even after award was passed and possession was taken by the Municipal Corporation, they staked their claims only for additional compensation. It is only thereafter that they filed writ petition on 14-7-1983. Such a belated writ petition, therefore, was rightly rejected by the learned Single Judge on the ground of gross delay and laches. The respondent-writ petitioners can be said to have waived their objections to the acquisition on the ground of extinction of public purpose by their own inaction, lethargy and indolent conduct. The Division Bench of the High Court had taken the view that because of their inaction no vested rights of third parties are created. That finding is obviously incorrect for the simple reason that because of the indolent conduct of the writ petitioners land got acquired, award was passed, compensation was handed over to various claimants including the landlord. Reference applications came to be filed for larger compensation by claimants including writ petitioners themselves. The acquired land got vested in the State Government and the Municipal Corporation free from all encumbrances as enjoined by Section 16 of the Land Acquisition Act. Thus right to get more compensation got vested in diverse claimants by passing of the award, as well as vested right was created in favour of the Bombay Municipal Corporation by virtue of the vesting of the land in the State Government for being handed over to the Corporation. All these events could not be wished away by observing that no third party rights were created by them. The writ petition came to be filed after all these events had taken place. Such a writ petition was clearly stillborn due to gross delay and laches. I, therefore, respectfully agree with the conclusion to which my learned brother Ramaswamy, J. has reached that on the ground of delay and laches the writ petition is required to be dismissed and the appeal has to be allowed on that ground.

ORDER OF THE COURT

36. In view of the concurrent order this appeal has to be allowed and the writ petition has to be dismissed. The order of the Division Bench is set aside and the order of the learned Single Judge stands restored. Consequently the appeal is allowed with costs quantified at Rs 10,000 (Rupees ten thousand only).