SUPREME COURT OF INDIA

Girnar Traders

Vs.

State of Maharashtra

C.A.No.3703 of 2003

(B.N. Agrawal, P.K. Balasubramanyan and P.P. Naolekar JJ.)

27.08.2007

JUDGMENT:

P.P. NAOLEKAR, J.

1. We have had the benefit of perusing the judgment prepared by learned brother P.K. Balasubramanyan, J. in Civil Appeal No.3703 of 2003 titled M/s. Girnar Traders v. State of Maharashtra and Others, wherein learned brother has taken into consideration various decisions of this Court, including decisions delivered by 3-Judge Benches, and various aspects considered therein, and thought it proper to refer the question regarding interpretation and applicability of Section 11A introduced into the Land Acquisition Act, 1894 (for short the LA Act) by Amendment Act 68 of 1984 to the Maharashtra Regional and Town Planning Act, 1966 (for short the MRTP Act) for consideration by a larger Bench. A 3- Judge Bench of this Court in Nagpur Improvement Trust v. Vasantrao and Others, (2002) 7 SCC 657 and U.P. Avas Evam Vikas Parishad v. Jainul Islam and Another, (1998) 2 SCC 467, on interpretation of the provisions of the Acts under challenge, has held that the LA Act was incorporated in those statutes, that is, they were cases of legislation by incorporation and, therefore, the amendment brought about subsequently in the LA Act would not apply to the statutes in question. However, beneficial amendment of payment of compensation under the amended provisions of the LA Act was made applicable and the owner of the land was held to be entitled to the beneficial payment of compensation. It appears, it was so held to save the Acts from the vice of arbitrary and hostile discrimination. There does not appear to be any justifiable reason for not applying this principle so far as it relates to the acquisition of land. If the land is not acquired within the stipulated time, then the whole proceedings in acquisition comes to an end, and thereby the owner of the land would be entitled to retain his land which appears to be the superior right than the owners right to get the compensation for acquisition of his land. A 2-Judge Bench of this Court in State of Maharashtra and Another v. Sant Joginder Singh Kishan Singh and Others, 1995 Supp. (2) SCC 475 has held that Section 11A of the LA Act is a procedural provision and does not stand on the same footing as Section 23 of the LA Act. We find it difficult to subscribe to the view taken. Procedure is a mode in which the successive steps in litigation are taken. Section 11A not only provides a period in which the land acquisition proceedings are to be completed but also provides for consequences, namely, that if no award is made within the time stipulated, the entire proceedings for the acquisition of the land shall lapse. Lapsing of the acquisition of the land results in owner of the land retaining ownership right in the property and

according to us it is a substantive right accrued to the owner of the land, and that in view thereof we feel Section 11A of the LA Act is part of the law which creates and defines right, not adjective law which defines method of enforcing rights. It is a law that creates, defines and regulates the right and powers of the party. For this and the other reasons assigned by our learned brother, we are in agreement with him that the question involved requires consideration by a larger Bench and, accordingly, we agree with the reasons recorded by my learned brother for referring the question to a larger Bench. However, on consideration of the erudite judgment prepared by our esteemed & learned brother Balasubramanyan, J., regretfully we are unable to persuade ourselves to agree to the decision arrived at by him on interpretation of Section 127 of the MRTP Act and also reference of the case to a larger Bench. Section 127 of the MRTP Act is a special provision and would be attracted in the peculiar facts and circumstances mentioned in the Section itself. The Section provides a procedure for the land owner to get his land de-reserved if steps are not taken by the State Government within the stipulated period and the relief which the owner of the land is entitled to is also provided therein. The steps to be taken for acquisition of land as provided under Section 127 of the MRTP Act have to be taken into consideration keeping in mind the time lag between the period the land is brought under reservation and inaction on the part of the State to acquire it. Section 127 of the MRTP Act is a unique provision providing remedial measure to the owner of the land whose land is under the planning scheme for a long period of time, which would be interpreted in the facts and circumstances of each individual case. It does not have any universal application and, therefore, the applicability thereof would depend on the facts of each case. S.L.P.(C) No.11446 of 2005 titled M/s. S.P. Building Corporation and Anr. v. State of Maharashtra and Others, is required to be decided by this Bench only and, therefore, we propose to decide it as follows:

2. Leave granted.

3. The brief facts necessary for deciding the questions raised in this appeal are that appellant No.1 is a partnership firm registered under the Indian Partnership Act, 1932 and is the owner of an immovable property, i.e. a piece of land, bearing City Survey No.18/738, admeasuring about 5387.35 sq.yds. situated at Carmichael Road, Malabar Hill Division, Mumbai-400026.

4. On 7.7.1958, Bombay Municipal Corporation had issued a declaration under Section 4(1) of the Bombay Town Planning Act, 1954 (hereinafter referred to as the Act of 1954), expressing its intention to prepare a development plan for the area under its jurisdiction and published a development plan in accordance with the provisions of the said Act on 9.1.1964. The plan was submitted by the Corporation to the Government of Maharashtra for sanction on 8.7.1964 and on 6.1.1967 the Government of Maharashtra accorded sanction to the development plan which pertained to D Ward of the Corporation area and the plan came into force on 7.2.1967. The land of the appellant was notified for development as Open Space and Childrens Park. On 11.1.1967, the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the MRTP Act) repealed the Act of 1954 saving the proceedings already initiated under the Act of 1954.

5. Proceedings were taken up for acquisition of the land. Since no award was made as per Section 11A of the Land Acquisition (Amendment) Act, 1984 which came into force on 24.9.1984, the acquisition proceedings were declared by the Land Acquisition Officer to have lapsed. Later on a revised development plan sanctioned by the State Government on 6.7.1991 came into effect on 16.9.1991. On 3.2.1998 the appellants served notice through their advocates under Section 127 of the MRTP Act asking for re-notifying the property or to release the said property from reservation and accord sanction/approval to develop the property by the owner. In reply, the Municipal

Corporation, Greater Mumbai informed the appellants that purchase notice issued by their advocates was invalid as ten years had not expired since the sanction of the revised development plan, came into force on 16.9.1991. On 18.10.2000, the appellants again served purchase notice under Section 127 of the MRTP Act. Again the Municipal Corporation of Greater Mumbai informed the appellants that the notice was invalid as the period of ten years had not lapsed from the date of the revised plan.

6. On 15.3.2002, the appellants addressed yet another notice to the Municipal Corporation, Greater Mumbai under Section 127 of the MRTP Act stating therein that ten years period had lapsed on 16.9.2001 and since no proceedings for acquisition of the land as contemplated under Section 127(1) of the MRTP Act or under the Land Acquisition Act , 1894 (hereinafter referred to as the LA Act) having been commenced nor has any award been made or compensation paid, the property should be de-reserved. The purchase notice was served on the Municipal Commissioner, Greater Mumbai on 19.3.2002.

7. The counsel for respondent-Municipal Corporation has submitted certain documents before us at the time of hearing. In pursuance of the purchase notice served on the Municipal Corporation, Greater Mumbai, a meeting of the Improvement Committee was called. On 9.9.2002 (document no.1), the Improvement Committee passed Resolution No.183 recommending the Municipal Corporation to initiate the acquisition proceedings under the provisions of Section 126(2) and (4) of the MRTP Act read with Section 6 of the LA Act, as amended upto date, or in the alternative to recommend acquisition as provided under Section 126(1) of the MRTP Act. The rates for acquisition under the LA Act and that under the provisions of Section 126(1) of the MRTP Act were also provided for. On 13.9.2002 (document no.2) without there being any resolution sanctioning acquisition or taking steps for acquisition, an application was sent by the Chief Engineer (Development Plan) to the State Government for initiating acquisition proceedings under Section 126 of the MRTP Act as amended upto date read with Section 6 of the LA Act. Thereafter, on 16.9.2002 (document no.3) the Corporation passed Resolution No.956 whereby sanction was given to initiate the acquisition proceedings of the land and the Municipal Commissioner was authorised to make an application to the State Government under the provisions of Section 126(2) & (4) of the MRTP Act read with Section 6 of the LA Act, as amended upto date; and / or, initiate proceedings under Section 90(1) & (3) of the Bombay Municipal Corporation Act, 1888 as amended upto date, for the land being purchased by the Commissioner on behalf of the Corporation. After the Resolution was passed, on 17.9.2002 (document no.4) a letter was written by the Chief Engineer (Development Plan) to the Secretary, Urban Development Department, Government of Maharashtra informing that the Corporation have accorded sanction to initiate acquisition proceedings and for the said purpose authorized the Municipal Commissioner to make an application to the State Government as per the provisions of Section 126(1) of the MRTP Act as amended upto date to issue orders for acquisition of the property under the MRTP Act read with Section 6 of the LA Act. The letter dated 17.9.2002 is reproduced herein:- To,

The Secretary,

Urban Development Dept.,

Govt. of Maharashtra,

Mantralaya,

Mumbai-400032

Sub: Acquisition of land bearing C.S.No.18738 of Malabar Hill division reserved for Children Park.
Ref: i) TPB-4302/572/UD-11 dtd.27.3.02

ii) CHE/ACQ/C/962 dtd. 13.9.2002

Sir,

With reference to above, it is to be mentioned here that Corporation by their Resolution No. 956 of 16.9.2002 (copy enclosed) have accorded sanction to initiate the acquisition proceedings for the above mentioned land reserved for Childrens Park adm. approximately 4504.52 sq.mt. and also authorized the Municipal Commissioner to make application to State Govt. as per provision of 126(1) of the M.R.&T.P. Act 1966 as amended upto date to issue order for the acquisition of property under reference as provided under the provisions of sec. 126(2) (3) and (4) of the M.R.&T.P. Act 1966 as amended upto date read with section 6 of L.A. Act 1894. The application to State Govt. along with the required information in the usual proforma in triplicate & three copies of plans have already been submitted vide this office letter issued u/no. CHE/ACQ/C/962 dtd. 13.9.2002 (copy enclosed). This is for information and further necessary action.

Yours faithfully,

Sd/-

CHIEF ENGINEER

(DEVELOPMENT PLAN)

Later on the State Government on 20.11.2002 issued a notification exercising the power conferred by sub-section (4) read with sub-section (2) of Section 126 of the MRTP Act read with Section 6 of the LA Act.

8. Having aggrieved by the action of the respondents, the appellants filed a writ petition in the High Court of Judicature at Bombay which was registered as Writ Petition No.353 of 2005 (M/s. S.P. Building Corporation & Anr. vs. State of Maharashtra and Ors.) challenging the proceedings initiated by the respondents. It was contended by the appellants that under Section 127 of the MRTP Act, no steps having been taken within the period prescribed, the reservation is deemed to have lapsed; and secondly, the acquisition proceedings initiated under the MRTP Act, are deemed to have lapsed in view of Section 11A of the LA Act, the award having not been admittedly made within two years from the date of publication of the declaration. The Division Bench of the Bombay High Court dismissed the petition on both counts. It was held by the Bombay High Court that the resolution of the Improvement Committee passed on 9.9.2002 and the letter written by the Chief Engineer dated 13.9.2002 would constitute a `step taken by the Municipal Corporation as provided under Section 127 of the MRTP Act. The Division Bench relying on a judgment of this Court in the case of State of Maharashtra and Another v. Sant Joginder Singh Kishan Singh and Others, 1995 Supp. (2) SCC 475, has held that Section 11A of the LA Act as amended is not applicable to the proceedings for acquisition initiated under the MRTP Act and dismissed the writ petition.

9. The appellants filed this appeal by way of S.L.P. (C) No. 11446 of 2005 challenging the order of the Division Bench of the Bombay High Court. This Court by an order dated 11.7.2005, issued notice and tagged the case along with C.A. No. 3703 of 2003 wherein a 2-Judge Bench of this Court had doubted the correctness of the decision rendered by this Court in Sant Joginder Singh Case (supra) on which the Bombay High Court has relied, in regard to the applicability of the newly inserted provision of Section 11A of the LA Act, to the acquisition under Chapter VII of the MRTP Act. Thus, the matter has been heard along with C.A. No.3703 of 2003 wherein the only question raised is in regard to the applicability of the new provision of Section 11A of the LA Act to the acquisition made under the MRTP Act; whereas, apart from the said question, in this case we are also required to decide the scope and ambit of Section 127 read with Section 126 of the MRTP Act for the purposes of de-reservation of the land reserved under a development plan.

10. The question that requires consideration and answer in the present case is : Whether the reservation has lapsed due to the failure of the planning authority to take steps within the period of six months from the date of service of the notice of purchase as stipulated by Section 127 of the MRTP Act; and also the question as regards applicability of new Section 11A of the LA Act to the acquisition of land under the MRTP Act.

11. Under Section 2(19) of the MRTP Act, the planning authority means a local authority and includes other authorities provided in clauses (a) and (b). The local authority is defined in Section 2(15) which for the purposes of this case would be the Municipal Corporation of Greater Mumbai constituted under the Bombay Municipal Corporation Act.

12. Chapter VII of the MRTP Act deals with land acquisition. Sections 125 to 129 fall in Chapter VII. Section 125 provides that 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 LA Act. Section 126 provides three modes of acquisition of the land included in the town planning scheme for the public purpose. Section 127 provides for lapsing of reservation if the land reserved, allotted or designated is not acquired by agreement within 10 years from the date on which a final regional plan or final development plan comes into force or if proceedings for acquisition of land under the MRTP Act or under the LA Act are not commenced within such period, then the owner or any person interested in the land may serve a notice. If within six months from the date of service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed and the land shall be deemed to be released from such reservation. Section 128(1) confers the power on the State Government to acquire the land needed for a public purpose different from any public purpose under the scheme, or purpose of the planning authority or development authority or appropriate authority; the State Government may, notwithstanding anything contained in the MRTP Act, acquire the land under the provisions of the LA Act. Section 129(1) empowers the Collector after the publication of the declaration under Section 126(2) to enter on and take possession of the land under acquisition after giving a notice of 15 days.

13. Section 127 falling in Chapter VII requires interpretation in the present case. However, the same cannot be understood without reference to Section 126 which has an important bearing while interpreting the words used in Section 127, namely, the land is not acquired or no steps as aforesaid are commenced for its acquisition. Therefore, the relevant provisions to be considered are Sections

126 and 127 of the MRTP Act. Section 126 of the MRTP Act reads as follows:

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

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

(b) in lieu of any such amount, by granting the land-owner or the lessee, subject, however, to the lessee paying the lessor or depositing with the Planning Authority, Development Authority or Appropriate Authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said Authorities concerned 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 absolutely free from all encumbrances in the Planning Authority, Development Authority, or as the case may be, any Appropriate Authority.

(2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or if the State Government (except in cases falling under section 49 and except as provided in section 113A) itself is of opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in section 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:

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

(ii) where the land is acquired for the purposes of a Special Planning Authority, the market value

prevailing on the date of publication of the notification of the area as an undeveloped area; and

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

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

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

(4) Notwithstanding anything contained in the proviso to sub-section (2) and sub-section (3), if a declaration is not made within the period referred to in sub-section (2) (or having been made, the aforesaid period expired on the commencement of the Maharashtra Regional and Town Planning

(Amendment) Act, 1993), the State Government may make a fresh declaration for acquiring the land under the Land Acquisition Act, 1894, in the manner provided by sub-sections (2) and (3) of this section, subject to the modification that the market value of the land shall be the market value at the date of declaration in the Official Gazette made for acquiring the land afresh.

Under sub-section (1) of Section 126, after publication of the draft regional plan, a development or any other plan or town planning scheme, any land required or reserved for any of the public purposes specified in any plan or scheme under the MRTP Act, may be acquired (a) by agreement between the parties by paying an amount agreed to; or (b) by granting the land owner or the lessee, 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 LA Act. Sub- section (2) provides that on receipt of such application or on its own motion, the State Government would satisfy itself that the land specified in the application, is needed for a public purpose and, if it is so found, would make a declaration by issuing a notification in the Official Gazette in the manner provided in Section 6 of the LA Act. Proviso is added to sub-section (2) whereunder a declaration under Section 6 of the LA Act in the Official Gazette has to be made within one year from the date of publication of the draft regional plan, development plan or any other plan or scheme, as the case may be. Sub- section (3) postulates that on publication of a declaration in the Official Gazette under Section 6 of the LA Act, the Collector shall proceed to take orders for the acquisition of the land under the LA Act and the provisions of that Act shall apply to the acquisition of the said land with certain modifications as provided in clauses (i), (ii) and (iii) of sub-section (3) for determination of the market value on the basis of different dates. Sub-section (3) makes it abundantly clear that after publication of the declaration in the Official Gazette under Section 6 of the LA Act, the entire procedure which shall be followed will be as provided under the LA Act, that is to say, from Section 8 onwards upto Section 28 of the LA Act which deal with

acquisition of land under the LA Act.

14. Sub-section (2) of Section 126 provides for one years limitation for publication of the declaration from the date of publication of the draft plan or scheme. Sub-section (4), however, empowers the State Government to make a fresh declaration under Section 6 of the LA Act even if the prescribed period of one year has expired. This declaration is to be issued by the State Government for acquisition of the land without there being any application moved by the planning/local authority under clause (c) of Section 126(1). Sub-section (4) of Section 126 authorizes the State Government to make a declaration for acquisition of the land under Section 6 of the LA Act without any steps taken by the planning authority, i.e., Bombay Municipal Corporation. Under sub-section (4) of Section 126, the State Government can make a fresh declaration if the declaration under sub- section (2) of Section 126 was not made within the time stipulated for acquisition of the land, if it is satisfied that the land is required for a public purpose, subject to the modification that the market value of the land shall be the market value at the date on which the declaration in the Official Gazette is made for acquisition of the land afresh. Sub-section (4) is the provision whereunder only the State Government is authorized and empowered to issue fresh declaration for acquiring the land under the LA Act.

15. Section 127 of the MRTP Act which requires consideration in the present case is a provision which provides, as is clear from its heading itself, for lapsing of reservation of the lands included in the development plan. The development authority for utilization of the land for the purpose for which it is included in the plan has to take steps and do things within the period stipulated in a particular span of time, the land having been reserved curtailing the right of the owner of its user. Section 127 reads as under: 127. Lapsing of reservations.- If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the Planning Authority, Development Authority or as the case may be, Appropriate Authority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise permissible in the case of adjacent land under the relevant plan. Section 127 prescribes two time periods. First, a period of 10 years within which the acquisition of the land reserved, allotted or designated has to be completed by agreement from the date on which a regional plan or development plan comes into force, or the proceedings for acquisition of such land under the MRTP Act or under the LA Act are commenced. Secondly, if the first part of Section 127 is not complied with or no steps are taken, then the second part of Section 127 will come into operation, under which a period of six months is provided from the date on which the notice has been served by the owner within which the land has to be acquired or the steps as aforesaid are to be commenced for its acquisition. The six-month period shall commence from the date the owner or any person interested in the land serves a notice on the planning authority, development authority or appropriate authority expressing his intent claiming de-reservation of the land. If neither of the things is done, the reservation shall lapse. If there is no notice by the owner or any person interested, there is no question of lapsing reservation, allotment or designation of the land under the development plan. Second part of Section 127 stipulates that the reservation of the land under a development scheme shall lapse if the land is not acquired or no steps are taken for

acquisition of the land within the period of six months from the date of service of the purchase notice. The word `aforesaid in the collocation of the words no steps as aforesaid are commenced for its acquisition obviously refers to the steps contemplated by Section 126 of the MRTP Act.

16. If no proceedings as provided under Section 127 are taken and as a result thereof the reservation of the land lapses, the land shall be released from reservation, allotment or designation and shall be available to the owner for the purpose of development. The availability of the land to the owner for the development would only be for the purpose which is permissible in the case of adjacent land under the relevant plan. Thus, even after the release, the owner cannot utilize the land in whatever manner he deems fit and proper, but its utilisation has to be in conformity with the relevant plan for which the adjacent lands are permitted to be utilized.

17. It is an admitted position that on 16.9.1991 the revised development plan was sanctioned and 10 years have expired on 15.9.2001 without there being any acquisition or steps being taken for acquisition of the land in question. On 15.3.2002, the purchase notice under Section 127 was given by the appellants which was received by the authorities on 19.3.2002. Under the second part of Section 127, the land was either required to be acquired or steps in that regard have to be commenced by 18.9.2002. For the first time after the service of purchase notice, on 9.9.2002 a proposal was made by the Improvement Committee recommending the Municipal Corporation for sanction to initiate the acquisition proceedings. On 13.9.2002 without there being any resolution by the Municipal Corporation, the Chief Engineer (Development Plan) sent an application to the State Government for initiating the acquisition proceedings. For the first time on 16.9.2002, a resolution was passed by the Municipal Corporation whereby sanction was given to initiate the acquisition proceedings of land and the Municipal Commissioner was authorised to make an application to the State Government and on 17.9.2002 a letter was sent by the Chief Engineer (Development Plan) to the Secretary, Urban Development Department, Government of Maharashtra for initiating acquisition proceedings. Admittedly, in the present case, the land was neither acquired nor were the steps taken within 10 years from the date on which the final regional plan or final development plan came into force.

18. Shri Shekhar Naphade, Senior Advocate appearing for the State and Shri Bhim Rao Naik, Senior Advocate appearing for the Municipal Corporation contended that the steps were taken on 17.9.2002 when in pursuance of the resolution passed by the Municipal Corporation of Greater Mumbai, the Chief Engineer (Development Plan) sent a letter to the State of Maharashtra enclosing therewith a copy of Resolution No. 956 dated 16.9.2002, requesting that the steps be taken for acquisition of the land and this step taken by the respondents would constitute `steps for the acquisition of the land under clause (c) of Section 126(1) of the MRTP Act, the same having been taken on 17.9.2002 when the period of six months had not expired, the same to be expired on 18.9.2002 and, therefore, the provision of de-reservation under Section 127 would not apply.

19. It is contended by Shri Soli J. Sorabjee and Shri U.U. Lalit, learned senior counsel appearing for the appellants, that the intent and purpose of Section 127 of the MRTP Act is the acquisition of land within six months or the steps are taken for acquisition of the land within six months, which could only be when a declaration under Section 6 of the LA Act is published in the Official Gazette. It is submitted by the learned senior counsel that the words if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition are not susceptible of a literal construction and the words have to be given a meaning which safeguards a citizen against arbitrary and irrational executive action which, in fact, may not

result in acquisition of the land for a long period to come. It cannot be doubted that the period of 10 years is a long period where the land of the owner is kept in reservation. Section 127 gives an opportunity to the owner for de-reservation of the land if no steps are taken for acquisition by the authorities within a period of six months in spite of service of notice for de-reservation after the period of 10 years has expired.

20. While interpreting the purpose of Section 127, this Court in the matter of Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants Association and Others, 1988 (Supp.) SCC 55, has said :

11. It cannot be doubted that a period of 10 years is long enough. The Development or the Planning Authority must take recourse to acquisition with some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land as otherwise, the compensation paid for the acquisition would be wholly illusory. Such fetter on statutory powers is in the interest of the general public and the conditions subject to which they can be exercised must be strictly followed.

The Court also said:

While the contention of learned counsel appearing for the appellant that the words `six months from the date of service of such notice in Section 127 of the Act were not susceptible of a literal construction, must be accepted, it must be borne in mind that the period of six months provided by Section 127 upon the expiry of which the reservation of the land under a Development Plan lapses, is a valuable safeguard to the citizen against arbitrary and irrational executive action. Section 127 of the Act is a fetter upon the power of eminent domain.

21. Giving a plain meaning to the words used in the statute would not be resorted to when there is a sense of possible injustice. In such a case, the simple application of the words in their primary and unqualified sense is not always sufficient and will sometimes fail to carry out the manifest intention of law-giver as collected from the statute itself and the nature of subject-matter and the mischiefs to be remedied. If the plain words lead apparently to do some injustice or absurdity and at variance with, or not required by, the scope and object of the legislation, it would be necessary to examine further and to test, by certain settled rules of interpretation, what was the real and true intention of the legislature and thereafter apply the words if they are capable of being so applied so as to give effect to that intention. Where the plain literal interpretation of statutory provision were to manifestly result in injustice never intended by the legislature, the court is entitled to modify the language used by the legislature so as to achieve the intention of the legislature and to produce a rational construction.

22. Where the legislature has used words in an Act which if generally construed, must lead to palpable injustice and consequences revolting to the mind of any reasonable man, the court will always endeavour to place on such words a reasonable limitation, on the ground that the legislature could not have intended such consequence to ensue, unless the express language in the Act or binding authority prevents such limitation being interpolated into the Act. In construing an Act, a construction ought not be put that would work injustice, or even hardship or inconvenience, unless it is clear that such was the intention of the legislature. It is also settled that where the language of the legislature admits of two constructions and if construction in one way would lead to obvious injustice, the courts act upon the view that such a result could not have been intended, unless the

intention had been manifested in express words. Out of the two interpretations, that language of the statute should be preferred to that interpretation which would frustrate it. It is a cardinal rule governing the interpretation of the statutes that when the language of the legislature admits of two constructions, the court should not adopt the construction which would lead to an absurdity or obvious injustice. It is equally well settled that within two constructions that alternative is to be chosen which would be consistent with the smooth working of the system which the statute purported to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion with the working of the system. [See Collector of Customs v. Digvijaysinhji Spinning & Weaving Mills Ltd. (1962) 1 SCR 896, at page 899 and His Holiness Kesvananda Bharati v. State of Kerala, AIR 1973 SC 1461].

23. The court must always lean to the interpretation which is a reasonable one, and discard the literal interpretation which does not fit in with the scheme of the Act under consideration.

24. In series of judgments of this Court, these exceptional situations have been provided for. In Narashimaha Murthy v. Susheelabai, (1996) 3 SCC 644 (at page 647), it was held that:

The purpose of law is to prevent brooding sense of injustice. It is not the words of the law but the spirit and eternal sense of it that makes the law meaningful.

In the case of American Home Products Corporation v. Mac Laboratories Pvt. Ltd. and Another, AIR 1986 SC 137 (at page 166, para 66), it was held that: .. It is a well-known principle of interpretation of statutes that a construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly. Further, in the case of State of Punjab v. Sat Ram Das, AIR 1959 Punj. 497, the Punjab High Court held that: To avoid absurdity or incongruity, grammatical and ordinary sense of the words can, in certain circumstances, be avoided.

25. Many a times, it becomes necessary to look into the true intention of the legislature in order to give a proper effect to the statutory provisions and in order to achieve the actual intended goal behind the legislation. In the case of Tirath Singh v. Bachittar Singh and others, AIR 1955 SC 830 (at page 833, para 7), it was held by the Court that: Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence.

The same has been upheld by the Supreme Court in Commissioner of Income Tax, Bangalore v. J.H. Gotla, AIR 1985 SC 1698 and in Andhra Cotton Mills Ltd. v. Lakshmi Ganesh Cotton Mill, (1996) 1 ALT 537 (AP). Similarly, in the case of State of Rajasthan v. Leela Jain and Others, AIR 1965 SC 1296 (at page 1299, para 11), it was held that:

Unless the words are unmeaning or absurd, it would not be in accord with any sound principle of construction to refuse to give effect to the provisions of a statute on the very elusive ground that to give them their ordinary meaning leads to consequences which are not in accord with the notions of propriety or justice

26. Learned senior counsel appearing on both sides have strongly relied on the decision of this

Court in Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants Association and Others, 1988 (Supp.) SCC 55. It is contended by the learned senior counsel for the appellants that the decision squarely covers the proposition of law wherein it has been held that the development or the planning authority must take recourse to acquisition with some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land; and that the period of six months provided by Section 127 upon the expiry of which the reservation of the land under a development plan lapses, is a valuable safeguard to the citizens against the arbitrary and irrational executive action. Section 127 of the Act is a fetter upon the power of eminent domain. On the other hand, the learned senior counsel for the State submits that if we read para 11 of the above judgment, it is clearly held that the steps for commencement of the acquisition obviously refer to the steps contemplated by Section 126(1) which means the step taken of making an application under clause (c) of Section 126(1) of the MRTP Act and has contended that this Court had already observed that after the service of notice from the owner or any person interested in the land as provided under Section 127 of the MRTP Act, the steps taken within six months of such service, included any step taken by the appropriate authority for the acquisition of land as contemplated under the provisions of Section 126 (1) of the MRTP Act. It has been further contended that such observation of this Court is binding as precedent.

27. At this juncture, it will be appropriate for us to refer some of the judicial pronouncements to illustrate what constitutes the binding precedent. This Court in Additional District Magistrate, Jabalpur v. Shivakant Shukla, (1976) 2 SCC 521 has observed:

394. The Earl of Halsbury, L.C. said in Quinn v. Leathem, 1901 AC 495, 506 that the generality of the expressions which may be found in a judgment are not intended to be expositions of the whole law but are governed and qualified by the particular facts of the case in which such expressions are to be found. This Court in the State of Orissa v. Sudhansu Sekhar Misra, (1968) 2 SCR 154, 163, uttered the caution that it is not a profitable task to extract a sentence here and there from a judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein

474. when we are considering the observations of a high judicial authority like this Court, the greatest possible care must be taken to relate the observations of a judge to the precise issues before him and to confine such observations, even though expressed in broad terms, in the general compass of the question before him, unless he makes it clear that he intended his remarks to have a wider ambit. It is not possible for judges always to express their judgments so as to exclude entirely the risk that in some subsequent case their language may be misapplied and any attempt at such perfection of expression can only lead to the opposite result of uncertainty and even obscurity as regards the case in hand...

In Union of India and Others v. Dhanwanti Devi and Others, (1996) 6 SCC 44, a three-Judge Bench of this Court has observed as follows:

9. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a judges decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates - (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the

legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.

10. Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents

Similarly, in Director of Settlements, A.P. and Others v. M.R. Apparao and Another, (2002) 4 SCC 638, a Bench comprising of three Judges, has observed:

7. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentenceA judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An obiter dictum as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision...

This Court in Shin-Etsu Chemical Co. Ltd v. Aksh Optifibre Ltd. and Another, (2005) 7 SCC 234 has observed: 69. if the court thinks that an issue does not arise, then any observation made with regard to such an issue would be purely obiter dictum. It is a well-settled proposition that the ratio decidendi of a case is the principle of law that decided the dispute in the facts of the case and, therefore, a decision cannot be relied upon in support of a proposition that it did not decide. [See also: Mittal Engg. Works (P) Ltd. v. CCE, (1997) 1 SCC 203 at p. 207 (para. 8); Jagdish Lal v. State of Haryana, (1997) 6 SCC 538 at p. 560 (para. 17); Divisional Controller, KSRTC v. Mahadeva Shetty, (2003) 7 SCC 197 at p. 206 (para. 23).]

28. We will now analyse that whether the observations of the Court in Municipal Corporation of Greater Bombay Case (supra) as extracted from paragraph 11 of that Judgment (supra) constituted binding or authoritative precedent with respect to the question of law arising in the present case. In

Municipal Corporation of Greater Bombay Case (supra), the planning authority had published a draft Development Plan in which land of a trust property was reserved for a recreation ground. The Development Plan was finalised and sanctioned by the State Government on 6.1.1967. The final development scheme came into effect from 7.2.1967. Since no action had been taken for acquisition of the land until 1.1.1977, the owners thereof, i.e., the trustees, served a purchase notice dated 1.7.1977 on Corporation either to acquire the same or release it from acquisition, and the same was received on 4.7.1977. On 28.7.1977 the Corporations Executive Engineer wrote a letter to the trustees asking information regarding the ownership of the land and the particulars of the tenants thereof. It was also stated that the relevant date under Section 127 of the MRTP Act would be the date upon which such information was received. The trustees, by their lawyers letter dated 3.8.1977, conveyed that the date of six months stipulated by Section 127 had to be computed from the date of the receipt from them of the information required and that Corporation could not make an inquiry at that stage without taking a decision on the material question. The Executive Engineer once again wrote to trustees stating that the period of six months allowed by Section 127 would commence on 4.8.1977, i.e., the date when the requisite information was furnished. The Corporation passed a resolution dated 10.1.1978 for the acquisition of the land and made an application to the State Government which on being satisfied that the land was required for a public purpose issued the requisite notification dated 7.4.1978 under Section 6 of the LA Act for acquisition of the land. A petition was filed before the High Court to quash the aforementioned notification, which was allowed by the Single Judge and subsequently maintained by the Division Bench. The contention of the appellant Corporation before this Court was that the period of six months after the notice by the owner or any person interested in the land as specified under section 127, would start from date when such person had provided the requisite information to the Corporation.

29. In light of the above-mentioned factual matrix, the question of law involved in the Municipal Corporation of Greater Bombay Case (supra) was as follows:

2. The short point involved in this appeal by special leave from a judgment of a Division Bench of the Bombay High Court dated June 18, 1986, is whether the period of six months specified in Section 127 of the Act is to be reckoned from the date of service of the purchase notice dated July 1, 1977 by the owner on the Planning Authority i.e. the Municipal Corporation of Greater Bombay here, or the date on which the requisite information of particulars is furnished by the owner.

The Court has answered the above question as follows: 7. According to the plain reading of Section 127 of the Act, it is manifest that the question whether the reservation has lapsed due to the failure of the Planning Authority to take any steps within a period of six months of the date of service of the notice of purchase as stipulated by Section 127, is a mixed question of fact and law. It would therefore be difficult, if not well nigh impossible, to lay down a rule of universal application. It cannot be posited that the period of six months would necessarily begin to run from the date of service of a purchase notice under Section 127 of the Act. The condition pre-requisite for the running of time under Section 127 is the service of a valid purchase notice. It is needless to stress that the Corporation must prima facie be satisfied that the notice served was by the owner of the affected land or any person interested in the land. But, at the same time, Section 127 of the Act does not contemplate an investigation into title by the officers of the Planning Authority, nor can the officers prevent the running of time if there is a valid notice

30. Thus, after perusing the judgment in Municipal Corporation of Greater Bombay Case (supra), we have found that the question for consideration before the Court in the Municipal Corporation of

Greater Bombay Case (supra) has reference to first step required to be taken by the owner after lapse of 10 years period without any step taken by the authority for acquisition of land, whereby the owners of the land served the notice for dereservation of the land. The Court was not called upon to decide the case on the substantial step, namely, the step taken by the authority within six months of service of notice by the owners for dereservation of their land which is second step required to be taken by the authority after service of notice. The observations of this Court regarding the linking of word aforesaid from the wordings no steps as aforesaid are commenced for its acquisition of Section 127 with the steps taken by the competent authority for acquisition of land as provided under Section 126(1) of the MRTP Act, had no direct or substantial nexus either with the factual matrix or any of the legal issues raised before it. It is apparent that no legal issues, either with respect to interpretation of words no steps as aforesaid are commenced for its acquisition as stipulated under the provisions of Section 127 or any link of these words with steps to be taken on service of notice, were contended before the Court. Thus, observations of the Court did not relate to any of the legal questions arising in the case and, accordingly, cannot be considered as the part of ratio decidendi. Hence, in light of the aforementioned judicial pronouncements, which have well settled the proposition that only the ratio decidendi can act as the binding or authoritative precedent, it is clear that the reliance placed on mere general observations or casual expressions of the Court, is not of much avail to the respondents.

31. When we conjointly read Sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owners property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in Municipal Corporation of Greater Bombay Case (supra). If the acquisition is left for a time immemorial in the hands of the concerned authority by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the land owner for his utilization as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for de-reservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the land owner for de-reservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation. Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilization of his land as per the user permissible under the plan. When mandate is given in a Section requiring compliance within a particular period, the strict compliance is required thereof as introduction of this Section is with legislative intent to balance the power of the State of eminent domain. The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilize the

land for the purpose it is reserved in the plan in a given time or let the owner utilize the land for the purpose it is permissible under the Town Planning Scheme. The step taken under the Section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It is trite that failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTPAct by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

32. It may also be noted that the legislature while enacting Section 127 has deliberately used the word `steps (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act. Clause (c) of Section 126(1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under Section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of Section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act.

33. The MRTP Act does not contain any reference to Section 4 or Section 5A of the LA Act. The MRTP Act contains the provisions relating to preparation of regional plan, the development plan, plans for comprehensive developments, town planning schemes and in such plans and in the schemes, the land is reserved for public purpose. The reservation of land for a particular purpose under the MRTP Act is done through a complex exercise which begins with land use map, survey, population studies and several other complex factors. This process replaces the provisions of Section 4 of the LA Act and the inquiry contemplated under Section 5A of the LA Act. These provisions are purposely excluded for the purposes of acquisition under the MRTP Act. The acquisition commences with the publication of declaration under Section 6 of the LA Act. The publication of the declaration under sub-sections (2) and (4) of Section 126 read with Section 6 of the LA Act is a sine qua non for the commencement of any proceedings for acquisition under the MRTP Act. It is Section 6 declaration which would commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in sub-section (3) of Section 126 of the MRTP Act. Thus, unless and until Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced.

34. There is another aspect of the matter. If we read Section 126 of the MRTP Act and the words used therein are given the verbatim meaning, then the steps commenced for acquisition of the land would not include making of an application under Section 126(1)(c) or the declaration which is to be made by the State Government under sub-section (2) of Section 126 of the MRTP Act.

35. On a conjoint reading of sub-sections (1), (2) and (4) of Section 126, we notice that Section 126 provides for different steps which are to be taken by the authorities for acquisition of the land in different eventualities and within a particular time span. Steps taken for acquisition of the land by the authorities under clause (c) of Section 126(1) have to be culminated into Section 6 declaration under the LA Act for acquisition of the land in the Official Gazette, within a period of one year

under the proviso to sub-section (2) of Section 126. If no such declaration is made within the time prescribed, no declaration under Section 6 of the LA Act could be issued under the proviso to sub-section (2) and no further steps for acquisition of the land could be taken in pursuance of the application moved to the State Government by the planning authority or other authority. Proviso to sub-section (2) of Section 126 prohibits publication of the declaration after the expiry of one year from the date of publication of draft regional plan, development plan or any other plan or scheme. Thus, from the date of publication of the draft regional plan, within one year an application has to be moved under clause (c) of Section 126(1) which should culminate into a declaration under Section 6 of the LA Act. As per the proviso to sub- section (2) of Section 126, the maximum period permitted between the publication of a draft regional plan and declaration by the Government in the Official Gazette under Section 126(2) is one year. In other words, during one year of the publication of the draft regional plan, two steps need to be completed, namely, (i) application by the appropriate authority to the State Government under Section 126(1)(c); and (ii) declaration by the State Government on receipt of the application mentioned in clause (c) of Section 126(1) on satisfaction of the conditions specified under Section 126(2). The only exception to this provision has been given under Section 126(4). In the present case, the amended regional plan was published in the year 1991. Thereafter, the steps by making an application under clause (c) of sub-section (1) of Section 126 for issuance of the declaration of acquisition and the declaration itself has to be made within the period of one year from the date of the publication of regional plan, that is, within the period of one year from 1991. The application under Section 126(1)(c) could be said to be a step taken for acquisition of the land if such application is moved within the period of one year from the date of publication of regional plan. The application moved after the expiry of one year could not result in the publication of declaration in the manner provided under Section 6 of the LA Act, under sub-section (2) of Section 126 of the MRTP Act, there being a prohibition under the proviso to issue such declaration after one year. Therefore, by no stretch of imagination, the step taken by the Municipal Corporation under Section 126(1)(c) of making an application could be said to be a step for the commencement of acquisition of the land. After the expiry of one year, it is left to the Government concerned under sub-section (4) of Section 126 to issue declaration under Section 6 of the LA Act for the purposes of acquisition for which no application is required under Section 126(1)(c). Sub-section (4) of Section 126 of the MRTP Act would come into operation if the State Government is of the view that the land is required to be acquired for any public purpose.

36. The High Court has committed an apparent error when it held that the steps taken by the respondent- Corporation on 9.9.2002 and 13.9.2002 would constitute steps as required under Section 126(1)(c) of the MRTP Act. What is required under Section 126(1)(c) is that the application is to be moved to the State Government for acquiring the land under the LA Act by the planning/local authority. Passing of a resolution by the Improvement Committee recommending that the steps be taken under Section 126(1)(c) or making an application by the Chief Engineer without there being any authority or resolution passed by the Municipal Corporation, could not be taken to be steps taken of moving an application before the State Government for acquiring the land under the LA Act. The High Court has committed an apparent error in relying on these two documents for reaching the conclusion that the steps for acquisition had been commenced by the Municipal Corporation before the expiry of period of six months which was to expire on 18.9.2002. Further, if we look at the letter dated 17.9.2002 which, as per the counsel for the respondent- Corporation, is a request made by the Municipal Corporation to the State Government under clause (c) of Section 126(1), we cannot agree with the submissions of the respondents. The letter itself shows that the resolution was passed by the Municipal Corporation on 16.9.2002 whereby it was informed that the sanction had been accorded to initiate the acquisition proceedings for the land in question. The letter

also mentioned that the authorization had been given to the Municipal Commissioner to make an application to the State Government as per the provisions of Section 126(1) of the MRTP Act. Under Section 2(19) read with Section 2(15) with Section 126(1) of the MRTP Act, the application to the State Government under clause (c) of Section 126(1) has to be made by the planning/local authority, i.e. the Municipal Corporation of Greater Mumbai constituted under the Bombay Municipal Corporation Act. The Municipal Corporation had passed a resolution delegating authority to Municipal Commissioner for making an application to the State Government, but the application/letter either dated 13.9.2002 or 17.9.2002 were made to the State Government by the Chief Engineer (Development Plan). The authority was given by the Municipal Corporation to the Municipal Commissioner to make an application to the State Government. No such application or letter moved by the Municipal Commissioner has been produced before us. On being asked by this Court, as many as six documents have been produced before us by the counsel for the Municipal Corporation who has stated before us that these documents were also placed before the Division Bench of the Bombay High Court. Therefore, we have permitted production of these documents before us. On a minute and careful scrutiny of the documents produced before us, we do not find that the application under clause (c) of Section 126(1) was moved by the officer authorized by the Municipal Corporation, i.e. the Municipal Commissioner, to the State Government for acquisition of the land, so that it could be said that steps as contemplated were taken for the commencement of acquisition proceedings.

37. In view of our decision on the interpretation and applicability of Section 127 of the MRTP Act to the facts of the present case, the appellants are entitled to the relief claimed, and the other question argued on the applicability of the newly inserted Section 11A of the LA Act to the acquisition of land made under the MRTP Act need not require to be considered by us in this case.

38. For the aforesaid reasons, the impugned judgment and order dated 18.3.2005 passed by the Division Bench of the Bombay High Court is set aside and this appeal is allowed. As no steps have been taken by the Municipal Corporation for acquisition of the land within the time period, there is deemed de-reservation of the land in question and the appellants are permitted to utilise the land as permissible under Section 127 of the MRTP Act.