M/S. GIRNAR TRADERS

v.

STATE OF MAHARASHTRA AND ORS.

AUGUST 27, 2007

[B.N. AGRAWAL, P.K. BALASUBRAMANYAN AND P.P. NAOLEKAR, JJ.]

Land Acquisition Act, 1894/Maharashtra Regional and Town Planning Act, 1966:

Section 11A/Sections 126, 127

Interpretation and applicability of newly inserted S.11A of the Land Acquisition Act to the MRTP Act—Referred to larger Bench—There is no application under clause (s) of S.126(1) moved by the officer authorized by the Municipal Corporation i.e. the Municipal Commissioner to the State Government for acquisition of the land—Thus, it cannot be said that steps as contemplated were taken for the commencement of acquisition proceedings—Hence, appellants are entitled to deemed dereservation and permitted to utilize the land as permissible under S.127 of the MRTP Act—Constitution of India, 1950, Article 246.

Interpretation of Statutes—When language of the Legislature admits of two constructions, Court should not adopt the construction which would lead to absurdity or obvious injustice—The construction which would be consistent with the smooth working of the system which the statute proposed to be regulating should be chosen—The alternative is to be rejected which will introduce uncertainly, friction or confusion with the working of the system.

Words and Phrases:

'Steps'—Meaning of in the context of S.127 of Maharshtra Regional and Town Planning Act, 1966.

A C.A.No.3922 of 2007 has been filed against the dismissal of Writ Petition by the Bombay High Court holding that Section 11A of the Land Acquisition Act as amended is not applicable to the proceedings for acquisition initiated under the Maharashtra Regional and Town Planning Act, relying on *State of Maharashtra & Anr.* v. *Sant Joginder Singh Kishan Singh and* B *Ors.*, [1995] Supp. 2 SCC 475.

Civil Appeal No. 3703 of 2003 has been referred to the present 3 Judge Bench after a 2 Judge Bench of this Court doubted the correctness of the decision rendered in *Sant Joginder Singh's* case.

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On behalf of Municipal Corporation of Greater Mumbai, it was contended that 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 steps be taken for acquisition of the land and this step taken by the respondents would constitute 'steps' for the acquisition of D 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 provision of de-reservation under Section 127 would not apply.

On behalf of the appellants, it was contended that the intent and purpose E 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; 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 F 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; and that it cannot be doubted that the period of 10 years is a long period where the land of the owner is G 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 inspite of service of notice for de-reservation after the period of 10 years has expired.

H It was also contended for the appellants that the decision in *Municipal*

Corporation of Greater Bombay v. *Dr. Hakimwadi Tenants' Association and Ors.*, [1988] Supp. SCC 55 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 behalf of the State it was submitted that in para 11 of the said 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 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.

Allowing Civil Appeal No.3922 of 2007 and as regards Civil Appeal No.3703 of 2003 referring the question regarding interpretation and applicability of Section 11A introduced into the Land Acquisition Act, 1894 by Amendment Act 68 of 1984 to the Maharashtra Regional and Town Planning Act, 1966 for consideration by a larger Bench, the Court

HELD: (Per Naolekar, J. for himself and Agrawal, J.):

1.1. 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

A 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 B 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. [Para 21] [412-A-C]

C *Municipal Coproration of Greater Bombay* v. *Dr. Hakimwadi Tenants' Association & Ors.,* [1988] Suppl. SCC 55, referred to.

1.2. Where the legislature has used words in an Act which if generally construed, must lead to palpable injustice and consequences revolting to the D 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 E 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 F express words. [Para 22] [412-D-F]

Collector of Customs v. *Digvijaysinhji Spinning & Weaving Mills Ltd.,* [1962] 1 SCR 896 and *His Holiness Kesvananda Bharati* v. *State of Kerala,* AIR (1973) SC 1461, relied on.

G 1.3. 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. [Para 23] [413-A]

Narashimaha Murthy v. *Susheelabai,* [1996] 3 SCC 644 and *American* H *Home Products Corporation* v. *Mac Laboratories Pvt. Ltd. and Anr.,* AIR

(1986) SC 137, relied on. A

State of Punjab v. *Sat Ram Das,* AIR (1959) Punj. 497, referred to.

1.4. 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. B

[Para 25] [413-F]

Tirath Singh v. *Bachittar Singh and Ors.,* AIR (1955) SC 830; *Commissioner of Income Tax, Bangalore* v. *J.H. Gotla,* AIR (1985) SC 1698 and *State of Rajasthan* v. *Leela Jain and Ors.,* AIR (1965) SC 1296, relied on. C

Andhra Cotton Mills Ltd. v. *Lakshmi Ganesh Cotton Mill,* (1996) 1 ALT 537 AP, referred to.

2.1. The question for consideration before the Court in the *Municipal Corporation of Greater Bombay* Case 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, the reliance placed on mere general observations or casual expressions of the Court, is not of much avail to the D E F G H

A **respondents. [Para 30] [419-A-E]**

Union of India and Ors. **v.** *Dhanwanti Devi and Ors.*, **[1996] 6 SCC 44;** *Director of Settlements, A.P. and Ors.* **v.** *M.R. Apparao and Anr.*, **[2002] 4 SCC 638 and** *Shin-Etsu Chemical Co. Ltd* **v.** *Aksh Optifibre Ltd. and Anr.*, **[2005]**
B **7 SCC 234, relied on.**

Municipal Coproration of Greater Bombay **v.** *Dr. Hakimwadi Tenants' Asscciation & Ors.*, **[1988] Suppl. SCC 55, referred to.**

2.2. On a conjoint reading of Sections 126 and 127 of the MRTP Act, it
C **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 owner's property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in** *Municipal Corporation of Greater Bombay* **Case. If the acquisition is left for**
D **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**
E **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**
F **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**
G **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**
H **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. [Para 31] [419-F-H; 420-A-C] A

Municipal Coproration of Greater Bombay v. *Dr. Hakimwadi Tenants' Association & Ors.*, [1988] Suppl. SCC 55, referred to.

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2.3. 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 MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition. [Para 31] [420-E-G] C D

3.1. 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 E F G H

A are commenced. [Para 33] [421-C-F]

3.2. If one reads 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
B 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. On a conjoint reading of sub-sections (1), (2) and (4) of Section 126, it is seen 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
C 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
D 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
E 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. In other words, during one year of the publication of the draft regional plan, two steps need to be
F 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).

G [Para, 34 35] [421-G, H; 422-A-E]

3.3. 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
H 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. A B

[Para 35] [422-E-G]

3.4. 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, the letter dated 17.9.2002 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 C D E F G H

A 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 this Court.

B [Para 36] [433-B-H]

State of Maharashtra and Anr. v. *Sant Joginder Singh Kishan Singh and Ors.*, [1995] Supp. 2 SCC 475, dissented from.

C *Nagpur Improvement Trust* v. *Vasantrao and Ors.*, [2002] 7 SCC 657 and *U.P. Avas Evam Vikas Parishad* v. *Jainul Islam and Anr.*, [1998] 2 SCC 467, referred to.

4.1. In view of the decision on the interpretation and applicability of
D 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 in this case. [Para 37] [424-C]

E 4.2. The impugned judgment and order dated 18.3.2005 passed by the Division Bench of the Bombay High Court is set aside. 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
F of the MRTP Act. [Para 38] [424-D-E]

Per P.K. Balasubramanyan, J.:

1.1. On an analysis of the provisions in the context of the questions that
G are before this Court, what emerges is that the publication of the plan with the reservation therein itself operates as a notification like the one under Section 4(1) of the Land Acquisition Act, that a declaration has to be made akin to a declaration under Section 6 of the Land Acquisition Act, the compensation has to be paid not with reference to the date of the notification
H under Section 125 of the Act but with reference to the date of declaration

under Section 126 of the MRTP Act and that a declaration under Section 126 of the Act had to be made within one year of the application for acquisition made by the authority under the MRTP Act. But in case the declaration was not so made, a fresh declaration has to be issued and compensation has to be paid with reference to the date of the fresh declaration and the authority had also the power to take prior possession in case of urgency on the conditions stipulated under Section 129 of the MRTP Act. The MRTP Act provides for lapsing of reservations but does not provide for lapsing of the acquisition. The reservation lapses on the expiry of ten years and on the expiry of six months after a purchase notice is issued by the owner of the land unless steps are taken in the meanwhile to proceed with the acquisition. If there is no agreement regarding compensation and acquisition then the State Government has to be approached "for acquiring such land under the Land *Acquisition* Act, 1894." [Para 12] [431-G-H; 432-A-C]

1.2. Under the Land Acquisition Act, a notification under Section 4(1) of the Act is followed by a declaration under Section 6 of the Act. The amendment introduced by Act 68 of 1984 provides that no declaration under Section 6 shall be made after the expiry of one year from the date of publication of the notification under Section 4(1) of the Act. It further provides that the Collector, after the declaration is made, has to take an order for acquisition, mark out the land available, issue notice to persons interested in the land to be acquired and for, passing an award containing the true area of the land acquired, the compensation that should be allowed for the land and the apportionment of the compensation among the claimants, if there are more than one. Section 11A introduced by Act 68 of 1984 provides that the Collector shall make an award within a period of two years from the date of publication of the declaration and if no award is made within that period the entire proceedings for the acquisition of the land shall stand lapsed. Thus, the Land Acquisition Act, as amended in the year 1984 provides for two lapses of the acquisition; one, in a case where a declaration under Section 6 is not made within one year of the publication of the notification under Section 4(1) of the Act and; two, the award itself not being made within a period of two years from the publication of the declaration. [Para 13] [432-D, G]

2. It is clear that when the MRTP Act was enacted, the Land Acquisition Act that was referred was the unamended Act of 1894. That Act did not contain

A either a provision for lapsing of the acquisition on the non issue of a declaration under Section 6 of the Act within one year of a notification under Section 4(1) of the Act or by the award not being rendered within two years of a declaration under Section 6 of the Act. These two time limits were prescribed by Act 68 of 1984. Thereafter, the State Legislature amended the B MRTP Act by substituting the proviso to sub-Section (2) of Section 126 providing that a declaration shall not be made after the expiry of one year from the date of notification under Section 125 of the MRTP Act. Simultaneously, sub-Section (4) was amended providing that notwithstanding the fact that a declaration had not been made within one year, the Government C could make another declaration under Section 126 of the MRTP Act in terms of the Land Acquisition Act in the manner provided by sub-sections (2) and (3) of Section 126 with the only consequence that the compensation payable shall be the compensation as on the date of the fresh declaration. Significantly, the State Legislature did not introduce any provision either for the lapse of D an acquisition or for lapsing of the proceedings for acquisition if an award is not made within two years of the declaration under Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act. [Para 15] [433-B, E]

Chairman of the Municipal Commissioners of Howrah v. *Shalimar Wood* E *Products & Anr.*, [1963] 1 S.C.R. 47; *U.P. Awas Evam Vikas Parishad* v. *Jainul Islam & Ors.*, [1998] 2 SCC 467 and *Nagpur Improvement Trust* v. *Vasantrao & Ors.*, [2002] 7 S.C.C. 657, relied on.

Secretary of State v. *Hindustan Cooperative Insurance Societies Ltd.*, AIR (1931) P.C. 149; *Rangoon Botatoung Company* v. *Collector of Rangoon,* F 39 Indian Appeals 197; *Ujagar Prints & Ors.* v. *Union of India & Ors.*, [1989] 3 S.C.C. 488; *Nagpur Improvement Trust and Anr.* v. *Vithal Rao & Ors.*, [1973] 1 SCC 500; *State of Kerala & Ors.* v. *T.M. Peter & Ors.*, [1980] 3 S.C.C. 554 and *The State of Madhya Pradesh* v. *M.V. Narasimhan,* [1975] 2 S.C.C. 377, referred to.

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3.1. Under our Constitution, there is a distribution of legislative powers between the Parliament and the legislatures of States. Under Article 246 (1) of the Constitution, Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule to the H Constitution. Under Article 246 (3) of the Constitution, State has exclusive

power to make laws for the State with respect to any of the matters enumerated in List II in the Seventh Schedule to the Constitution. Of course, under Article 246(2) of the Constitution, in respect of matters enumerated in List III in the Seventh Schedule to the Constitution, both the Parliament and the State Legislatures have the power to make laws. The legislative fields thus are well defined subject to some overlapping here and there. Therefore, in the context of the Indian Constitution and what can be called the separation of legislative powers, the question arises as to how far it is open to adopt the theory of legislation by reference and to adopt the consequences flowing therefrom. No doubt, as on that day, the legislature had chosen to adopt the parliamentary legislation. Actually, when a State Legislature incorporates the provisions of a parliamentary enactment as part of its own legislation, it is enacting it as on that day as its own legislation. The effect thereof can be conceived to be a case of the legislature re-enacting the parliamentary enactment in respect of a subject matter which is exclusively within its legislative field.

[Para 26] [441-F-H; 442-A-B]

3.2. It cannot be readily inferred that the State Legislature has made such a surrender of its legislative powers when it adopts a parliamentary enactment as on the date it existed, by referring to it in its enactment or by incorporating it in its enactment. This aspect requires consideration by a Constitution Bench considering that it also involves an interpretation of the Constitution and the Constitutional Scheme of Legislation.

[Para 26] [442-F-G]

4.1. The second of the questions, of course, relate to the interpretation of Section 127 of the MRTP Act. The question has to be considered in the light of the decision in *Municipal Corporation of Greater Bombay* v. *Dr. Hakimwadi Tenants' Association & Ors.*, and the expression used in Section 127 of the Act which speaks of the land not being acquired or no steps as stated earlier are commenced for its acquisition. Obviously, under the MRTP Act, in a case where it is not acquired by negotiation, the authority can only request the State Government to acquire the lands. In the context of Sections 126 and 127, the question is whether it is not sufficient if the authority within six months of receipt of the purchase notice issued by the owner, applies to a State Government for acquiring the land as a step contemplated by Section

A 127 of the MRTP Act. This is also a question which is of considerable importance in the context of the Town Planning Acts and the lapsing of schemes as distinct from the lapsing of acquisition. This is also an important question which requires an authoritative pronouncement, in the context of the argument on behalf of the appellant that the step contemplated by Section 127 of the Act
B is a step under the Land Acquisition Act and not a step under the MRTP Act.

[Para 27] [442-G-H; 443-A-C]

4.2. Under Section 126(1) of the Act the authority under the MRTP Act can only make an application to the State Government for acquiring the
C concerned land under the Land Acquisition Act, 1894. This is clear from Section 126(1)(c). And clause (c) applies, when the acquisition cannot be made in terms of clauses (a) and (b) of Section 126(1). The authority under the MRTP Act cannot be set in motion proceeding under the Land Acquisition Act while acting under Section 126(1) of the MRTP Act. It can only request
D the State Government to acquire the land and the State Government initiates steps to acquire it when it is satisfied that the land, the acquisition of which is sought for, is needed for the public purpose specified in the application made by the authority under the MRTP Act. It is not as if the authority under the MRTP Act can issue a declaration in the manner provided for under
E Section 6 of the Land Acquisition Act read with Section 126(2) of the MRTP Act. [Para 28] [443-D-F]

4.3. When Section 127 of the Act is interpreted, it is not possible to forget the impact of Section 126(1) of the Act. Obviously, the provisions have to be read harmoniously. The court can only postulate the question whether
F the authority under the MRTP Act has done which it possibly could, in terms of the statute. Therefore, while reading Section 127, one has to take note of the fact that the authority under the MRTP Act can only make an application for acquisition under the Land Acquisition Act and nothing more. Therefore, when Section 127 of the MRTP Act says that "if within six months from the
G date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition" the reservation shall be deemed to lapse. One has to see what the Authority under MRTP Act has done. The first part of the provision above quoted is unambiguous and that is a case where the land is actually acquired. Or, in other words, the acquisition is complete.
H The second limb above quoted shows that it is possible to avert the lapse of

the scheme if steps as aforesaid are commenced for its acquisition. The step that the authority under the MRTP Act can commence, is the step of applying to the State Government to acquire such land under the Land Acquisition Act. After all, the legislature has given the authority a locus poenitentiae for invoking the machinery for acquisition under the Land Acquisition Act. Therefore, when a purchase notice is received by it, in all reasonableness, what it can do is to make an application to the State Government to make the acquisition within six months of the receipt of the purchase notice.

[Para 29] [443-G-H; 444-A-D]

Municipal Coproration of Greater Bombay v. *Dr. Hakimwadi Tenants' Association & Ors.*, [1988] Suppl. SCC 55, relied on.

Girnar Traders v. *State of Maharashtra & Ors.*, [2004] 8 S.C.C. 505 and *State of Maharashtra & Anr.* v. *Sant Joginder Singh Kishan Singh & Ors.*, [1995] 2 S.C.R. 242, referred to.

5.1. In the instant case, the application has been made according to the respondents by the Chief Engineer as authorised by the local authority and to say that the letter written by him is unauthorised or is not adequate compliance of Section 127 of the MRTP Act appears to be unwarranted especially when one keeps in mind the laudable objects of the MRTP Act. The MRTP Act serves a great social purpose and the approach of the court to an interpretation must be to see to it that the social purpose is not defeated as far as possible. Therefore, a purposive interpretation of Section 127 of the Act so as to achieve the object of the MRTP Act is called for.

[Para 29 and 30] [444-G-H; 445-A]

5.2. There has been sufficient compliance with the requirement of Section 127 of the MRTP Act by the authority under the Act by the acquisition initiated against the appellant in the appeal No.3922 of 2007 and the reservation in respect of the land involved therein does not lapse by the operation of Section 127 of the Act. However, the said question also would stand referred to the larger Bench. [Para 31] [445-B-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3703 of 2003.

From the final Judgment and Order dated 29.03.2000 of the High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No. 822 of 2000.

V.A.Mohta, Soli J.Sorabjee, U.U.Lalit, Shyam Divan, Shekhar Naphade and Bhim Rao Naik, Sanjeev Kumar Choudhary, Sanjay Visen, Nilkant Nayak, P.V.Yogeswaran, Ruby Singh Ahuja, Arunabh Chowdhary, Ardhendumauli K.Prasad, Reetu Sharma, Amol Chitle, Manu Aggarwal, Manik Karanjawala, Shivaji M. Jadhav, Himanshu Gupta, Brij Kishor Sah, Rahul Joshi, R.K.Adsure, Chinmoy Khaladkar, Sushila Karanjkar, Gautam Godara, Bhargava V.Desai, Rahul Gupta and Reema Sharma for the appearing parties.

The Judgment of the Court was delivered by

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 Ors.*, 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 Ors.*, [2002] 7 SCC 657 and *U.P. Avas Evam Vikas Parishad* v. *Jainul Islam and Anr.*, [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 owner's right to get the compensation for acquisition of his land. A 2-Judge

Bench of this Court in *State of Maharashtra and Anr.* v. *Sant Joginder Singh Kishan Singh and Ors.*, [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 Ors.*, is required to be decided by this Bench only and, therefore, we propose to decide it as follows:

2. Leave granted.

A 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.

B 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 C 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 Children's Park'. On 11.1.1967, the Maharashtra Regional and Town Planning D 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 E 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 F 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 G 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 H 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 Children's 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.* v. *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 Anr.* v. *Sant Joginder Singh Kishan Singh and Ors.*, [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

A 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 B 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 C 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 D 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 E 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 F 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.

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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 H 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: A

"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 B 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 C

(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 D 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 E 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, F

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 G 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 H

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

A 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 B 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 year's limitation for publication of the declaration from the date of publication of the draft plan C 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 D 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 E 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.

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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 G 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

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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

A 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
B 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
C 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
D 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
E 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
F 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
G 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
H expired on 18.9.2002 and, therefore, the provision of de-reservation under

Section 127 would not apply. A

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 B 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 C 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. D

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 Ors.*, [1988] Supp. SCC 55, has said :

> "11. ... It cannot be doubted that a period of 10 years is long enough. E 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 F 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' G 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. H

A 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 B 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 C 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.

D

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 E 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 F 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 G 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 H 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]. A

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.

B

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 C makes the law meaningful...."

In the case of *American Home Products Corporation* v. *Mac Laboratories Pvt. Ltd. and Anr.,* AIR (1986) SC 137 (at page 166, para 66), it was held that:

> " .. It is a well-known principle of interpretation of statutes that D 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: E

> "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 F and in order to achieve the actual intended goal behind the legislation. In the case of *Tirath Singh* v. *Bachittar Singh and Ors.,* 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 G 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* H

A *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 Ors.,* AIR (1965) SC 1296 (at page 1299, para 11), it was held that:

> B "...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..."

C 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 Ors.,* [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 D 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 E 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 F 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.

G

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:

H

"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 Ors.* v. *Dhanwanti Devi and Ors.,* [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

A 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
B 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
C 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
D 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
E 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..."

F Similarly, in *Director of Settlements, A.P. and Ors.* v. *M.R. Apparao and Anr.*, [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
G judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence...A 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
H 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 Anr.*, [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 Corporation's 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 lawyer's 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

A 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 B 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:

C

> "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. D 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:

E

> "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 F 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 G 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..."

H 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 owner's 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

A 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 B 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 C 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 D 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. E 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 F 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 G 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 H 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

A 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, B 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 C 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 D 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 E 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 F 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 G 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 H 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. A

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 B C D E F G H

A 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 B 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.

C 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.

D

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 E permitted to utilise the land as permissible under Section 127 of the MRTP Act.

P.K. BALASUBRAMANYAN, J. 1. Leave granted in Special Leave Petition (Civil) No. 11446 of 2005.

F 2. Civil Appeal No. 3703 of 2003 is before us on the basis of an order of reference dated 14.10.2004 reported as *Girnar Traders* v. *State of Maharashtra & Ors.*, [2004] 8 S.C.C. 505. Civil Appeal arising out of Special Leave Petition (Civil) No. 11446 of 2005 is before us by virtue of an order dated 11.7.2005 tagging the same along with the Civil No. No. 3703 of 2003. G The question in Civil Appeal No. 3703 of 2003 and one of the questions in the Civil Appeal arising out of Special Leave Petition (Civil) No. 11446 of 2005 as posed by the order of reference is whether all the provisions of the Land Acquisition Act, 1894 as amended by the Central Act 68 of 1984, can be read into the provisions under Chapter VII of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the MRTP Act') for an acquisition under that H Act. According to the order of reference, the decision in *State of Maharashtra*

& Anr. v. *Sant Joginder Singh Kishan Singh & Ors.*, [1995] 2 S.C.R. 242 requires reconsideration. In the second of the appeals, this question arises along with a subsidiary question on the interpretation of Section 127 of the MRTP Act.

3. The MRTP Act as its preamble shows, is an act to make provision for planning the development and use of land in Regions established for that purpose and for the constitution of Regional Planning Boards therefor; to make better provisions for the preparation of Development plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective; to provide for the creation of new towns by means of Development Authorities; to make provisions for the compulsory acquisition of land required for public purposes in respect of the plans; and for purposes connected with the matters aforesaid. This legislation is a State enactment and according to the learned counsel for the State of Maharashtra, is covered by the Entries 5, 6, 10, 13, 14, 17, 18, 23, 24, 28, 33, 35 of List II and also by Entries 17A, 20, 31 and 42 of List III of the Constitution. In other words, the attempt is to show that the MRTP Act is a legislation concerned with planning, local development and regulation in various fields. As is seen from the preamble, the compulsory acquisitions of land provided for by the Act are acquisitions of land required for public purposes in respect of plans under the Town Planning Scheme and not for acquisitions of lands for other purposes or for public purpose as envisaged by the Land Acquisition Act.

4. In Civil Appeal No. 3703 of 2003, revised Draft Development Plan under the MRTP Act was prepared on 22.11.1983. The revised Draft Development Plan was published on 6.3.1987. The land in question was reserved for the purpose of education. The land was agricultural land. The appellant purchased the land only on 24.2.1984, after the preparation of the revised draft plan. The appellant attempted to get permission to develop the land but without success.

5. On 19.1.1989, the appellant issued a purchase notice to the Government under Section 49 of the MRTP Act. Steps for acquisition of land were taken for the purpose as envisaged by the Plan and a declaration under Section 126 of the MRTP Act published on 15.10.1991. A draft award was also allegedly prepared. At this stage, the appellant issued another purchase notice under Section 49 of the MRTP Act on 22.3.1994. The purchase notice was rejected. That rejection was challenged in the High Court by the appellant and the High Court on 31.3.1997, directed the authorities to initiate acquisition proceedings

A within one year failing which the land should be deemed to be released. Based on the earlier initiation of acquisition proceedings, a final award was passed on 10.2.1999 and the local authority deposited the award amount on 15.2.1999. Notice was issued under Section 12(2) of the Land Acquisition Act to the appellant. Then the appellant filed another Writ Petition, No. 822 of 2000 praying for the issue of a writ of certiorari to quash the proceedings on the B ground that Section 11A of the Land Acquisition Act, 1894 as amended, had been violated by the award not being passed within two years of the declaration under Section 6 of the Act, and for a writ of mandamus directing the respondents in the Writ Petition to permit the appellant to develop the reserved land for residential purposes. The High Court dismissed the Writ C Petition by the impugned judgment. It held, on a perusal of the documents, that it was satisfied that the requisite steps have been taken by the Special Land Acquisition Officer after the earlier Writ Petition was disposed of and there was no necessity to initiate fresh action by the Planning Authority as contemplated under Section 126(1)(c) of the MRTP Act and hence the relief sought could not be granted. It is this decision that was challenged before D this Court by way of a Petition for Special Leave to Appeal and leave having been granted the matter is before us as detailed earlier.

6. In the second of the appeals, the land involved is situate in Carmichael Road, Malabar Hill Division, Mumbai. The declaration under Section 4(1) of the Bombay Town Planning Act, 1954 was made on 7.7.1958. A development E plan in accordance with the provisions of Section 3(1) of that Act was published on 9.1.1964. On 8.7.1964, a modified development plan was submitted to the Bombay Municipal Corporation to the Government of Maharashtra for sanction. On 6.1.1967, the Government of Maharashtra sanctioned the development plan. The property in question was notified for development as F open space and children's park. On 11.1.1967, the MRTP Act came into force. The Bombay Town Planning Act stood repealed. But proceedings initiated or taken under that Act were saved by Section 165 of the MRTP Act. It was notified that 7.2.1967 would be the date on which the final development plan shall come into force.

G 7. On 6.1.1979, a declaration under Sections 126 (2) and 126(4) of the MRTP Act was made in respect of an extent of 2593.36 square meters of land. On 24.9.1984, the Land Acquisition (Amendment) Act 68 of 1984 came into force. On 16.9.1991, the revised development plan sanctioned by the State Government on 6.7.1991 came into effect. On 2.8.1993, the Municipal H Commissioner, Greater Bombay wrote to the Special Land Acquisition Officer

stating that the Bombay Municipal Corporation has decided to give priority for acquiring the property in question. The letter also requested Land Acquisition Officer to move the State Government for acquisition of the property for the purposes envisaged by the MRTP Act. The Land Acquisition Officer asked for submission of fresh proposals by taking a stand that an earlier notification for acquisition of the property issued had lapsed on 23.9.1986. On 3.2.1998, the appellant issued a purchase notice, *inter alia*, asking for re-notifying the property and to pay compensation as per the prevailing market rate or otherwise to release the property from reservation and accord sanction for development of the property. The Municipal Commissioner thereupon wrote to the State Government indicating that purchase notice issued was invalid as 10 years have not expired since the sanction of the revised development plan which came into effect only on 16.9.1991. On 18.10.2000, the appellant again issued a purchase notice under Section 127 of the MRTP Act to the Municipal Commissioner. Again, the appellant was informed that since 10 years have not expired, the notice was invalid. On 15.3.2002, the appellant issued yet another purchase notice under Section 127 of the Act calling upon the authority either to acquire the land or to permit the appellant to develop the same. According to the Municipal Corporation, on 9.9.2002, it passed a resolution deciding to request the State Government to acquire the land. On 13.9.2002, the request was sent to the State Government. On 20.11.2002, a notification under Section 126(4) of the MRTP Act read with Section 6 of the Land Acquisition Act was issued declaring that the property in question was needed for the purpose for which it has been reserved. The appellant filed a Writ Petition on 19.9.2003 seeking to have the notification dated 6.1.1967 and the declaration dated 6.1.1979 quashed and for a mandamus directing the respondents to accord sanction to the appellant for developing the property or in the alternative to re-notify the land and pay the market value as compensation. On 24.6.2004, the High Court disposed of the Writ Petition leaving the appellant to pursue the remedies that may be available in accordance with law. The appellant thereupon submitted a revised plan for development of the property purporting to be in the light of the direction of the High Court in the Writ Petition. The proposal was rejected. Another Writ Petition was filed by the appellant seeking permission to develop the land and for payment of enhanced compensation and for quashing the notification dated 20.11.2002 issued under Section 126(4) of the MRTP Act. After the pleadings were completed and the appellant sought and obtained an amendment of the Writ Petition, ultimately the High Court dismissed the Writ Petition relying on the decision in *State of Maharashtra & Anr.* v. *Sant Joginder Singh Kishan Singh & Ors.* [supra].

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A The appellant thereupon approached this Court and got its Petition for Special Leave to Appeal tagged to Civil Appeal No. 3703 of 2003.

8. The main contention urged on behalf of the appellants on the first aspect is that the MRTP Act has adopted the Land Acquisition Act, 1894 by reference and consequently, any amendment in the Land Acquisition Act, B 1894 would automatically be attracted in any proceedings for acquisition under the MRTP Act. Since Section 11A introduced into the Land Acquisition Act by Act 68 of 1984 provided that acquisition would lapse if an award is not passed within two years of the declaration under Section 6 of the Act, the entire proceedings for acquisition in both these cases have lapsed since C awards were not rendered within two years of the declaration. On the second aspect arising in the latter appeal, the contention is that on receipt of the purchase notice, the proceeding for acquisition itself was not started within six months of the receipt of the notice and consequently the acquisition and the reservations have lapsed under Section 127 of the MRTP Act. The further submission is that taking of some step like writing to the Government for D acquiring the land, is not a step as contemplated by Section 127 of the MRTP Act and the step must be a step under the Land Acquisition Act, namely, issuance of a declaration under Section 6 of that Act so as to enable the authority to acquire the land in terms of the MRTP Act. These contentions are met by learned counsel for the State of Maharashtra and the authorities E by contending that there was no incorporation by reference of the Land Acquisition Act of 1894 in the MRTP Act; that the MRTP Act had adopted the Land Acquisition Act only for limited purposes and since there was no provision in the MRTP Act for lapsing of an acquisition as distinct from the lapsing of the scheme itself, Section 11A of the Land Acquisition Act had no application. It is also contended that in any event the amendment brought F in by introduction of Section 11A into the Land Acquisition Act by the Amendment Act 68 of 1984 cannot be read into the MRTP Act which adopted the Land Acquisition Act as it then stood in the year 1966, on which date Section 11A was not in the statute book and hence there was no question of the acquisition lapsing in terms of Section 11A of the Land Acquisition G Act. It is submitted that the decision of this Court in *State of Maharashtra & Anr.* v. *Sant Joginder Singh Kishan Singh & Ors.* [supra] covers this question. On the latter question, it is submitted that what Section 127 of the Act contemplates is only a step under the MRTP Act as distinct from the Land Acquisition Act and the writing of the concerned authority to the Government to acquire the land for the purpose for which it has been reserved H under the revised plan within time would be a step in terms of Section 127

of the Act. It is submitted that the High Court has rightly relied upon the decision in *Municipal Coproration of Greater Bombay* v. *Dr. Hakimwadi Tenants' Association & Ors.*, [1988] Suppl. SCC 55) to negative the plea. A

9. We may first notice the scheme of the MRTP Act. We have already referred to the preamble of the MRTP Act which indicates that the main object of the Act is to make provisions for planning the development and use of land in regions established for the purpose. Different purposes are contemplated. Provision is also made for acquisition of land but as the preamble suggests it is for compulsory acquisition of land required for the purposes in respect of the plans and not merely a public purpose as understood under the Land Acquisition Act. Thus, it is clear that the acquisition of land under the MRTP Act is incidental to the main objective of bringing about a planned development of the different regions and areas in the State of Maharashtra and the use of various lands reserved in the development plan for the purpose for which it is reserved. Chapter VII deals with land acquisition. Section 125 provides for 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 areas 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. In other words, the moment a Regional development plan or town planning had been notified, Section 125 would operate as a notification corresponding to a notification under Section 4(1) of the Land Acquisition Act. Section 126 provides for acquisition of land so required in terms of the plan and three modes are prescribed for such acquisition. One is by agreement by parties by paying an amount agreed to, or by paying the compensation as provided in clause (b) or by making an application to the State Government for acquiring the land under the Land Acquisition Act. The acquisition under the Land Acquisition Act is contemplated by the authority making an application to the State Government for that purpose. In other words, it is not the authority that has to take steps for the acquiring of the land under the Land Acquisition Act but it is to apply to the State Government to make an acquisition under the Land Acquisition Act. On receipt of such an application if the State Government is satisfied that the land specified in the application is needed for the specified public purpose or that land is included in the plan and it is needed for any public purpose indicated, it may make a declaration, in the manner provided under Section 6 of the Land Acquisition Act. The declaration so published is deemed to be a declaration duly made under Section 126 of the MRTP Act. The proviso indicates that declaration shall be made before the expiry of one year from the date of the B C D E F G H

A draft regional plan, development plan or any other plan or the scheme. On publication of the declaration under Section 126, the Collector shall proceed to make an order for acquisition of the land under the Land Acquisition Act and the provisions of the Land Acquisition shall apply to the acquisition of the said land subject to the modification that the relevant date for determining the market value to be paid as compensation shall be the date of declaration B under Section 126 of the MRTP Act. The section also provides that if a declaration is not made within one year, the State Government may make a fresh declaration for acquiring the land subject to the modification that the market value of the land is to be paid with reference to the date of the subsequent declaration. In other words, on a declaration under Section 126 C being made, the authority under the MRTP Act has to apply to the government to acquire the land. The Government has to issue a declaration as contemplated by Section 6 of the Land Acquisition Act. The compensation is to be paid with reference to the date of such declaration. A declaration has to be made within one year of the request for acquisition. But in case it is not so made, a fresh declaration would be made in which case the compensation has to be D adjudged with reference to the market value on the date of the second declaration. Section 126 of the MRTP Act does not provide for the lapsing of the acquisition. On the other hand, the acquisition, notwithstanding the default to act in terms of sub-section (2) of that Section can be proceeded with by issuing a fresh declaration and the compensation has to be determined E with reference to the date of that fresh declaration. Section 127 provides for lapsing of reservations. Since interpretation of Section 127 is also involved we think it proper to extract the said provision.

> "127. If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement F 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 G to that effect; and if within six months from the date of the service of notice 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 be released from such reservation, allotment or designation and shall become available to the owner for H the purpose of development as otherwise, permissible in the case of

adjacent land under the relevant plan." A

10. The reservations are provided by the Act for a period of ten years. If the land is not acquired within a period of ten years by agreement of parties or if proceedings for acquisition of the land are not commenced within ten years, the owner could serve a notice on the planning authority or the development authority and if within six months from the date of the service B of such notice the land is not acquired or no steps 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 purpose, allotment or designation and shall become available to the owner for the purpose of development as permissible in the case of lands lying adjacent to C the land in question under the relevant plan. In other words, if the reservation lapses, the land owner could use the land for the purposes for which the adjacent lands are permitted to be used under the development plan or revised plan.

11. This section also does not appear to deal with lapsing of any D acquisition for which steps have been taken in terms of Section 126 of the MRTP Act by applying to the State Government for acquiring the land for the purpose for which it is reserved in the plan. But this Section contemplates the lapsing of reservation itself if the conditions laid down thereunder are not complied with. If no acquisition is made within 10 years of the notification under Section 125 of the Act, the land owner is given the right to issue a E notice calling upon the authority to acquire the land for the purpose for which it is earmarked in the plan. If on service of such a notice no steps for acquisition are taken within six months, the reservation would lapse. This section also does not contemplate a lapse of the acquisition as such. Section 128 confers power on the State Government to acquire land for a purpose F other than the one for which it is designated in any plan or scheme. Section 129 confers power to take possession of the land in case of urgency at any time after the declaration under Section 126(2) of the Act is notified, on condition that before taking possession, the Collector has to offer to the person interested, compensation as provided in that section.

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12. On an analysis of the provisions in the context of the questions that are before us, what emerges is that the publication of the plan with the reservation therein itself operates as a notification like the one under Section 4(1) of the Land Acquisition Act, that a declaration has to be made akin to a declaration under Section 6 of the Land Acquisition Act, the compensation H

A has to be paid not with reference to the date of the notification under Section 125 of the Act but with reference to the date of declaration under Section 126 of the MRTP Act and that a declaration under Section 126 of the Act had to be made within one year of the application for acquisition made by the authority under the MRTP Act. But in case the declaration was not so made, a fresh declaration has to be issued and compensation has to be paid with B reference to the date of the fresh declaration and the authority had also the power to take prior possession in case of urgency on the conditions stipulated under Section 129 of the MRTP Act. The MRTP Act provides for lapsing of reservations but does not provide for lapsing of the acquisition. The reservation lapses on the expiry of ten years and on the expiry of six months C after a purchase notice is issued by the owner of the land unless steps are taken in the meanwhile to proceed with the acquisition. If there is no agreement regarding compensation and acquisition then the State Government has to be approached "for acquiring such land under the Land Acquisition Act, 1894."

13. Under the Land Acquisition Act, a notification under Section 4(1) D of the Act is followed by a declaration under Section 6 of the Act. The amendment introduced by Act 68 of 1984 provides that no declaration under Section 6 shall be made after the expiry of one year from the date of publication of the notification under Section 4(1) of the Act. It further provides that the Collector, after the declaration is made, has to take an order for acquisition, E mark out the land available, issue notice to persons interested in the land to be acquired and for, passing an award containing the true area of the land acquired, the compensation that should be allowed for the land and the apportionment of the compensation among the claimants, if there are more than one. Section 11A introduced by Act 68 of 1984 provides that the Collector shall make an award within a period of two years from the date of F publication of the declaration and if no award is made within that period the entire proceedings for the acquisition of the land shall stand lapsed. Thus, the Land Acquisition Act, as amended in the year 1984 provides for two lapses of the acquisition; one, in a case where a declaration under Section 6 is not made within one year of the publication of the notification under G Section 4(1) of the Act and; two, the award itself not being made within a period of two years from the publication of the declaration.

14. The question we are called upon to decide is whether in spite of the MRTP Act not having provided for the lapse of an acquisition and in spite of having adopted a scheme for lapsing of the reservation itself, the stipulation H in Section 11A of the Land Acquisition could be invoked to hold that an

acquisition commenced after a declaration under Section 126 of the MRTP Act would lapse on the basis that the award had not been made within a period of two years from the date of declaration. A

15. It is clear that when the MRTP Act was enacted, the Land Acquisition Act that was referred was the unamended Act of 1894. That Act did not contain either a provision for lapsing of the acquisition on the non issue of a declaration under Section 6 of the Act within one year of a notification under Section 4(1) of the Act or by the award not being rendered within two years of a declaration under Section 6 of the Act. These two time limits were prescribed by Act 68 of 1984. Thereafter, the State Legislature amended the MRTP Act by substituting the proviso to sub-Section (2) of Section 126 providing that a declaration shall not be made after the expiry of one year from the date of notification under Section 125 of the MRTP Act. Simultaneously, sub-Section (4) was amended providing that notwithstanding the fact that a declaration had not been made within one year, the Government could make another declaration under Section 126 of the MRTP Act in terms of the Land Acquisition Act in the manner provided by sub-sections (2) and (3) of Section 126 with the only consequence that the compensation payable shall be the compensation as on the date of the fresh declaration. Significantly, the State Legislature did not introduce any provision either for the lapse of an acquisition or for lapsing of the proceedings for acquisition if an award is not made within two years of the declaration under Section 126 of the MRTP Act read with Section 6 of the Land Acquisition Act. According to learned counsel for the State and the Authorities, this has significance in that the MRTP Act did not intend the lapsing of an acquisition at all, and consequently for non compliance with the requirement of Section 11A of the Land Acquisition Act. B C D E

16. It is in this context that learned counsel for the appellants contended that the Land Acquisition Act is incorporated by reference in the MRTP Act and the consequences of such incorporation by reference is to make all subsequent amendments to the Land Acquisition Act applicable to cases of acquisition under the MRTP Act. Learned counsel submitted that the consequences of incorporation by reference cannot be ignored while dealing with the contention raised on behalf of the State. F G

17. Learned counsel for the State in answer submitted that the MRTP Act was a legislation under the State List and the Land Acquisition Act was a legislation under the Union List. In other words, one was State Legislation and the other was a Parliamentary Legislation. Learned counsel submitted that H

A the invocation of the theory of incorporation of reference when a State Act refers to a Central enactment and applying the rules in that behalf, would mean that the State Legislature would be taken to have surrendered its right of legislation to the Parliament, a situation that cannot be readily envisioned. According to him therefore, every amendment to the Central Legislation cannot automatically be adopted into the State Legislation in view of such a grave consequence. This is an aspect which appears to warrant serious consideration.

18. We shall now deal with some of the decisions that are germane to the issue. The first of the decisions is that of the Privy Council in *Secretary of State* v. *Hindustan Cooperative Insurance Societies Ltd.*, AIR (1931) P.C. 149]. In that case, the provisions of the Land Acquisition Act, 1894 were made applicable for acquisition of land under the Improvement Act. Under the Land Acquisition Act, against an award an appeal lay to the High Court under Section 54 of that Act. The Privy Council had held in *Rangoon Botatoung Company* v. *Collector of Rangoon,* 39 Indian Appeals 197] that under Section 54 of the Land Acquisition Act, no further appeal lay to the Privy Council from the decision of the High Court in an appeal under Section 54 of the Act. The Land Acquisition Act was amended providing that the award passed thereunder would be deemed to be a decree. The amendment was of the year 1921, after the Land Acquisition Act, 1894 had been adopted by the Improvement Act. The question before the Privy Council was whether by virtue of the amendment brought about in the year 1921 in the Land Acquisition Act deeming an award to be a decree, a further appeal would lie to the Privy Council from the decision of the High Court in the case of an acquisition under the Improvement Act. It was argued before the Privy Council that it was a case of incorporation by reference and therefore the amendment would automatically be attracted and consequently the award would be a decree and an appeal lay to the Privy Council. The Privy Council negatived the said contention thus:

> "But their Lordships think that there are other and perhaps more cogent objections to this contention of the Secretary of State, and their Lordships are not prepared to hold that the sub-section in question, which was not enacted till 1921, can be regarded as incorporated in the local Act of 1911. It was not part of the Land Acquisition Act when the local Act was passed, *nor in adopting the provisions of the Land Acquisition Act is there anything to suggest that the Bengal Legislature intended to bind themselves to any*

future additions which might be made to that Act. It is at least conceivable that new provisions might have been added to the Land Acquisition Act which would be wholly unsuitable to the local code. Nor, again, does Act 19 of 1921 contain any provision that the amendments enacted by it are to be treated as in any way retrospective, are to be regarded as affecting any other enactment than the Land Acquisition Act itself. Their Lordships regard the local Act as doing nothing more than incorporating certain provisions from an existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt.

Their Lordships have not been referred to anything in the General Rules of Construction embodied in the General Clauses Act, 1897, which supports the contention of the Secretary of State, nor to any authority which favours it. In this country it is accepted that where a statute is incorporated by reference into a second statute, the repeal of the first statute does not affect the second: see the cases collected in "Craies on Statute Law," Edn. 3, pp. 349-50. This doctrine finds expression in a common form section which regularly appears in the Amending and Repealing Acts which are passed from time to time in India. The section runs,

"The repeal by this Act of any enactment shall not affect any Act . . . in which such enactment has been applied, incorporated or referred to:"

The independent existence of the two Acts is therefore recognised; despite the death of the parent Act, its offsprinig survives in the incorporating Act. Though no such saving clause appears in the General Clauses Act, their Lordships think that the principle involved is as applicable in India as it is in this country.

It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition. So Lord Westbury says in Ex parte St. Sepulchre (1864) 33 L.J. Ch. 372:

'If the particular Act gives in itself a complete rule on this subject

matter, the expression of that rule would undoubtedly amount to an exception of the subject matter of the rule out of the general Act:' see also London, *Chatham and Dover Railway* v. *Wandsworth Board of Works* (8 C.P. 185)." (emphasis supplied)

19. As we understand this decision, their Lordships have indicated that in the absence of anything to suggest that the State Legislature intended to bind themselves to any future additions, which might be made in the Central Act, it would not be proper to infer that all amendments subsequent to the adoption would automatically apply. Their Lordships have also indicated that in such a situation, it would only be a case of a State Act incorporating certain provisions of an existing Central Act and nothing more. These reasons, we consider weighty. In *Chairman of the Municipal Commissioners of Howrah* v. *Shalimar Wood Products & Anr.*, [1963] 1 S.C.R. 47, this Court quoted with approval the concerned observations. In *Ujagar Prints & Ors.* v. *Union of India & Ors.*, [1989] 3 S.C.C. 488, this Court observed:

"Referential legislation is of two types. One is where an earlier Act or some of its provisions are incorporated by reference into a later Act. In this event, the provisions of the earlier Act or those so incorporated, as they stand in the earlier Act at the time of incorporation, will be read into the later Act. Subsequent changes in the earlier Act or the incorporated provisions will have to be ignored because, for all practical purposes, the existing provisions of the earlier Act have been re-enacted by such reference into the later one, rendering irrelevant what happens to the earlier statute thereafter. Examples of this can be seen in *Secretary of State* v. *Hindustan Cooperative Insurance Society,* AIR (1931) PC 149, *Bolani Ores Ltd.* v. *State of Orissa,* [1947] 2 S.C.C. 777, *Mahindra and Mahindra Ltd.* v. *Union of India,* [1979] 2 S.C.C. 529. On the other hand, the later statute may not incorporate the earlier provisions. It may only make a reference of a broad nature as to the law on a subject generally, as in *Bhajiya* v. *Gopikabai,* [1978] 2 S.C.C. 542, or contain a general reference to the terms of an earlier statute which are to be made applicable. In this case any modification, repeal or re-enactment of the earlier statute will also be carried into in the later, for here, the idea is that certain provisions of an earlier statute which become applicable in certain circumstances are to be made use of for the purpose of the later Act also. Examples of this type of legislation are to be seen in *Collector of Customs* v. *Nathella Sampathu Chetty,* [1962] 3 S.C.R. 786, *New Central Jute*

Mills Co. Ltd. v. *Assistant Collector of Central Excise,* [1970] 2 S.C.C. 820 and *Special Land Acquisition Officer* v. *City Improvement Trust,* [1976] 4 S.C.C. 697. Whether a particular statute falls into the first or second category is always a question of construction." A

20. A three judge Bench of this Court in *U.P. Awas Evam Vikas Parishad* v. *Jainul Islam & Ors.,* [1998] 2 SCC 467 after referring to and quoting from the decision of the Privy Council in *Secretary of State* v. *Hindustan Cooperative Insurance Societies Ltd.* (supra) held that the provisions of Section 55 of the concerned Adhiniyam were on the same lines as those contained in the Calcutta Improvement Act, 1911 and the principles laid down by the Privy Council are equally applicable to that case. This Court stated: B C

"The amendments introduced in the Land Acquisition Act by the 1984 Act were not part of the Land Acquisition Act as applicable in the State of Uttar Pradesh, at the time of passing of the Adhiniyam. The provisions of the Land Acquisition Act, as amended in its application to U.P., with the modifications specified in the Schedule to the Adhiniyam, have, therefore, to be treated to have been incorporated by reference into the Adhiniyam and became an integral part of the Adhiniyam and the said provisions would remain unaffected by any subsequent repeal or amendment in the Land Acquisition Act unless any of the exceptional situations indicated in *State of M.P.* v. *M.V. Narasimhan* can be attracted." D E

Their Lordships also observed that the Adhiniyam contains provisions regarding acquisition of land which are complete and self contained. Nor can the provisions in the Adhiniyam be said to be in *pari materia* with the Land Acquisition Act because the Adhiniyam also deals with matters which do not fall within the ambit of the Land Acquisition Act. It cannot also be said that the Act 68 of 1984, expressly or by necessary intendment, applies the said amendments to the Adhiniyam. In *Nagpur Improvement Trust* v. *Vasantrao & Ors.,* [2002] 7 S.C.C. 657, yet another three Judge Bench of this Court after quoting the observations of the Privy Council held that subsequent amendments to Section 6 of the Land Acquisition Act by Act 68 of 1984 have no effect on acquisitions under the State Acts of Uttar Pradesh, Punjab and Nagpur and that only the benefits conferred by Act 68 of 1984 relating to quantification of compensation alone would be applicable in the case of acquisition under the Town Planning Acts. Their Lordships repeated that it was also well settled that the question as to whether a particular legislation falls in the category of referential legislation or legislation by incorporation depends upon the F G H

A language used in the statute in which the reference is made to the earlier decisions and other relevant circumstances. This decision is a clear authority for the position that amendments brought about in the Land Acquisition Act, 1894, subsequent to the incorporation thereof by the State Act, could not apply to acquisitions under the State Act.

B 21. But, both in *U.P. Awas Evam Vikas Parishad* v. *Jainul Islam & Ors.* (supra) and *Nagpur Improvement Trust* v. *Vasantrao & Ors.* (supra), this Court has taken the view that the Compensation payable has to be calculated in terms of the Land Acquisition Act as amended by Act 68 of 1984. If the amendment has not to be taken to be incorporated, would this conclusion be C justified, is one aspect to be considered.

22. But then, the Court in *Nagpur Improvement Trust and Anr.* v. *Vithal Rao & Ors.*, [1973] 1 SCC 500 had upheld the decision of the Bombay High Court which had struck down certain provisions relating to the payment of compensation for acquisition of land under the Improvement Trust Act. This D Court summarised the decision of the High Court thus:

> "The High Court held that as the acquisition is by the State in all cases where the property is required to be acquired for the purpose of scheme framed by the Trust and such being the position, it is not permissible without violating the guarantee under Article 14 of the E Constitution for the State to acquire any property under the provisions of the Land Acquisition Act as amended by the Improvement Trust Act insofar as they relate to the basis of determination and payment of compensation. It must, therefore, be held that the provisions of Paragraph 10(2) and 10(3) insofar as they add a new clause (3)(a) to Section 23 and a proviso to sub-section (2) of Section 23 of the Land F Acquisition Act are ultra vires as violating the guarantee of Article 14 of the Constitution."

This Court stated:

> G ".....It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improviement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority H acquiring the land? In other words can different principles of

compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14."

Thus, it was held that differing compensations could not be paid for acquisition of land. It is relevant to notice that the decision was not based on a theory of legislation by reference but based on discrimination. The implication of this decision might justify the approach made in the earlier two cited decisions.

23. The decision in *State of Kerala & ors.* v. *T.M. Peter & ors.* [1980] 3 S.C.C. 554, saved the relevant provision by reading into it a provision for payment of solatium. There, this Court was dealing with the Town Planning Act, 1932 (originally Travancore Act 4 of 1108 ME) and the Kerala Land Acquisition Act, 1961. The High Court had struck down Section 34(1) and Section 34(2A) of the Town Planning Act and the appeal was against that decision. This Court stated:

"We regard this grievance as mythical, not real, for more than one reason. The scheme is for improvement of a town and, therefore, has a sense of urgency implicit in it. Government is aware of this import and it is fanciful apprehension to imagine that lazy insouciance will make Government slumber over the draft scheme for long years. Expeditious despatch is writ large on the process and that is an in-built guideline in the statute. At the same time, taking a pragmatic view, no precise time scale can be fixed in the Act because of the myriad factors which are to be considered by Government before granting sanction to a scheme in its original form or after modification. Section 12 and the other provisions give us some idea of the difficulty of a rigid time-frame being written into the statute especially when schemes may be small or big, simple or complex, demanding enquiries or provoking discontent. The many exercises, the differences of scale, the diverse consequences, the overall implications of developmental

A schemes and projects and the plurality of considerations, expert techniques and frequent consultations, hearings and other factors, precedent to according sanction are such that the many-sided dimension of the sanctioning process makes fixation of rigid time limits by the statute an impractical prescription. As pointed out earlier, city improvement schemes have facets which mark them out from B other land acquisition proposals. To miss the massive import and specialised nature of improvement schemes is to expose one's innocence of the dynamics of urban development. Shri Raghavan fairly pointed out that, in other stages, the Act provides for limitation in time (for example, Section 33 which fixes a period of three years between the C date of notification and the actual acquisiton). Only in one minimal area where time-limit may not be workable, it has not been specified.The statute has left it to Government to deal expeditiously with the scheme and we see sufficient guideline in the Act not to make the gap between the draft scheme and governmental sanction too procrastinatory to be arbitrary. We need hardly say, that the court is D not powerless to quash and grant relief where, arbitrary protraction or mala fide inaction of authorities injures an owner."

While upsetting the decision of the High Court and upholding the validity of the provisions, this Court held that even then, solatium also will be payable E to the land owners as provided under the Land Acquisition Act, even though the acquisition is under the Improvement Act.

24. In *State of Maharashtra & Anr.* v. *Sant Joginder Singh Kishan Singh & Ors.* (supra), this Court was dealing with the MRTP Act and two learned judges of this Court after referring the distinction between legislation F by incorporation and adoption by reference proceeded to hold that Section 11A of the Land Acquisition Act on which reliance is placed before us was not applicable to acquisitions under the MRTP Act. Of course, it is the correctness of this decision that has been doubted by the Bench referring the matter to a larger Bench since their Lordships were not inclined to agree with the position adopted in *State of Maharashtra & Anr.* v. *Sant Joginder Singh* G *Kishan Singh & Ors.* (supra) that Section 11A is only a procedural provision and the same introduced by Act 68 of 1984 cannot be read into the MRTP Act which adopted the Land Acquisition Act prior to the said amendment. Suffice it to notice that this decision is directly concerned with the MRTP Act.

H 25. Learned counsel for the appellants commended to us the reasons

given in the order of reference for overturning the decision in *State of Maharashtra & Anr.* v. *Sant Joginder Singh Kishan Singh & Ors.* (supra). Of course, we could consider or reconsider the correctness of the decision in *State of Maharashtra & Anr.* v. *Sant Joginder Singh Kishan Singh & Ors.* (supra) because that was rendered only by two learned judges. But, we find from the various arguments raised that there are at least two, three Judges Bench decisions which have recognised principles which may have to be considered or reconsidered while considering the aspects posed by the order of reference. In that context, we think that the whole question requires to be looked into considering the impact the answer to the questions may have on various City and Town Improvement Acts governing the planning of cities and towns and incidentally dealing with acquisitions of lands for the purpose for which the land is earmarked in the finalised plan or town planning scheme. We also feel that the question whether anything turns on the fact that one is a State enactment and the other a Parliamentary legislation as noticed by the Privy Council while considering whether a subsequent amendment to the parliamentary legislation can be read into the State enactment by invoking the theory of legislation by reference has to be authoritatively considered. If one were to hold that the subsequent amendment would not be applicable, then how far one would be justified in importing the provisions as amended, for determination and payment of compensation, may also have to be considered. In this context, we also think that the propositions enunciated in *The State of Madhya Pradesh* v. *M.V. Narasimhan,* [1975] 2 S.C.C. 377 may also have to be examined afresh so as to authoritatively pronounce upon the principles to be settled for application of the theory of incorporation by reference and importing into the original law the amendments made to the Act that is incorporated by reference. We also think that the question is of general importance and it will be appropriate if the gamut of questions rising is settled by an authoritative pronouncement of a Constitution Bench.

26. Under our Constitution, there is a distribution of legislative powers between the Parliament and the legislatures of States. Under Article 246 (1) of the Constitution, Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule to the Constitution. Under Article 246 (3) of the Constitution, State has exclusive power to make laws for the State with respect to any of the matters enumerated in List II in the Seventh Schedule to the Constitution. Of course, under Article 246(2) of the Constitution, in respect of matters enumerated in List III in the Seventh Schedule to the Constitution, both the Parliament and the State Legislatures have the power to make laws. The legislative fields thus are well

A defined subject to some overlapping here and there. Therefore, in the context of the Indian Constitution and what can be called the separation of legislative powers, the question arises as to how far it is open to adopt the theory of legislation by reference and to adopt the consequences flowing therefrom. No doubt, as on that day, the legislature had chosen to adopt the parliamentary legislation. Actually, when a State Legislature incorporates the provisions of
B a parliamentary enactment as part of its own legislation, it is enacting it as on that day as its own legislation. The effect thereof can be conceived to be a case of the legislature re-enacting the parliamentary enactment in respect of a subject matter which is exclusively within its legislative field. As stated in Craies on Statute Law, 7th Edn., page 223,

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> "The effect of bringing into a later Act by reference, Sections of an earlier Act is to introduce incorporated Sections of the earlier Act into the later Act *as if they had been enacted in it for the first time.*"
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> (emphasis supplied)

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One possible view is that you cannot incorporate as your own a Section that did not exist as on the day of incorporating another Act by reference. In that context, can it be said that, if there is a future amendment to the Parliamentary enactment that has been incorporated by the State Legislature, those amendments would also automatically become applicable in the case of the
E State enactment? This would be postulating a position of surrender of its legislative function or legislative power by the State Legislature to Parliament. In the context of the Indian Constitution, is such a position permissible? Is it open to the court to readily accept a surrender of its legislative power by the State Legislature in such circumstances by construing the enactment as a legislation by reference? In our view, it cannot be readily inferred that the
F State Legislature has made such a surrender of its legislative powers when it adopts a parliamentary enactment as on the date it existed, by referring to it in its enactment or by incorporating it in its enactment. With respect, we think that this aspect requires consideration by a Constitution Bench considering that it also involves an interpretation of the Constitution and the
G Constitutional Scheme of Legislation.

27. The second of the questions, of course, relate to the interpretation of Section 127 of the MRTP Act. The question has to be considered in the light of the decision in *Municipal Corporation of Greater Bombay* v. *Dr. Hakimwadi Tenants' Association & ors.* [supra] and the expression used in
H Section 127 of the Act which speaks of the land not being acquired or no

steps as stated earlier are commenced for its acquisition. Obviously, under the MRTP Act, in a case where it is not acquired by negotiation, the authority can only request the State Government to acquire the lands. In the context of Sections 126 and 127, the question is whether it is not sufficient if the authority within six months of receipt of the purchase notice issued by the owner, applies to a State Government for acquiring the land as a step contemplated by Section 127 of the MRTP Act. This is also a question which is of considerable importance in the context of the Town Planning Acts and the lapsing of schemes as distinct from the lapsing of acquisition. I feel that this is also an important question which requires an authoritative pronouncement, in the context of the argument on behalf of the appellant that the step contemplated by Section 127 of the Act is a step under the Land Acquisition Act and not a step under the MRTP Act.

28. But I find that my learned brothers are inclined to decide this question here and now. I find it difficult to appreciate why we should do so when the main issue involved herein also is being referred to a Constitution Bench. But since my learned Brothers have chosen to pronounce on it, I have necessarily to express my views. I find myself unable to agree with the view taken by them on the interpretation of Section 127 of the MRTP Act. Under Section 126(1) of the Act the authority under the MRTP Act can only make an application to the State Government for acquiring the concerned land under the Land Acquisition Act, 1894. This is clear from Section 126(1)(c). And clause (c) applies, when the acquisition cannot be made in terms of clauses (a) and (b) of Section 126(1). What I want to emphasise here is that the authority under the MRTP Act cannot be set in motion proceeding under the Land Acquisition Act while acting under Section 126(1) of the MRTP Act. It can only request the State Government to acquire the land and the State Government initiates steps to acquire it when it is satisfied that the land, the acquisition of which is sought for, is needed for the public purpose specified in the application made by the authority under the MRTP Act. It is not as if the authority under the MRTP Act can issue a declaration in the manner provided for under Section 6 of the Land Acquisition Act read with Section 126(2) of the MRTP Act.

29. When we interpret Section 127 of the Act, it is not possible to forget the impact of Section 126(1) of the Act. Obviously, the provisions have to be read harmoniously. The court can only postulate the question whether the authority under the MRTP Act has done which it possibly could, in terms of the statute. Therefore, while reading Section 127, we have to take note of the

A fact that the authority under the MRTP Act can only make an application for acquisition under the Land Acquisition Act and nothing more. Therefore, when Section 127 of the MRTP Act says that "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 shall be deemed to lapse. We have to see what the Authority under MRTP Act has done. The B first part of the provision above quoted is unambiguous and that is a case where the land is actually acquired. Or, in other words, the acquisition is complete. The second limb above quoted shows that it is possible to avert the lapse of the scheme if steps as aforesaid are commenced for its acquisition. The step that the authority under the MRTP Act can commence, is the step C of applying to the State Government to acquire such land under the Land Acquisition Act. After all, the legislature has given the authority a locus poenitentiae for invoking the machinery for acquisition under the Land Acquisition Act. Therefore, when a purchase notice is received by it, in all reasonableness, what it can do is to make an application to the State Government to make the acquisition within six months of the receipt of the D purchase notice. Is it necessary or proper to whittle down the locus poenitentiae given to ensure that even at the last moment the lapsing of the scheme can be averted by the authority under the MRTP Act or even after ten years it can seek the acquisition of the land on the receipt of the purchase notice? It is in that context that in *Municipal Coproration of Greater Bombay* E v. *Dr. Hakimwadi Tenants' Association & Ors.* (supra) this Court approved the view of the Bombay High Court that it is enough if the application is made by the Authority for acquisition of the land. Suppose, immediately on receipt of a purchase notice, the authority under the MRTP Act makes an application to the Government to acquire the land and for administrative reasons or otherwise it takes the Government time to initiate the proceeding and the six F months expire in between, can it be postulated that the reservation has lapsed? In that case we will be compelling the authority under the MRTP Act to do something that it has no power to do. According to me such an interpretation of the provision would be unreasonable and should be avoided. Here, the application has been made according to the respondents by the G Chief Engineer as authorised by the local authority and to say that the letter written by him is unauthorised or is not adequate compliance of Section 127 of the MRTP Act appears to me to be unwarranted especially when we keep in mind the laudable objects of the MRTP Act.

30. The MRTP Act serves a great social purpose and the approach of H the court to an interpretation must be to see to it that the social purpose is

not defeated as far as possible. Therefore, a purposive interpretation of Section 127 of the Act so as to achieve the object of the MRTP Act is called for. A

31. I would, therefore, hold that there has been sufficient compliance with the requirement of Section 127 of the MRTP Act by the authority under the Act by the acquisition initiated against the appellant in the appeal arising out of SLP(C) No.11446 of 2005 and the reservation in respect of the land involved therein does not lapse by the operation of Section 127 of the Act. But since on the main question in agreement with my learned Brothers I have referred the matter for decision by a Constitution Bench, I would not pass any final orders in this appeal merely based on my conclusion on the aspect relating to Section 127 of the MRTP Act. The said question also would stand referred to the larger Bench. B C

32. I therefore refer these appeals to a larger Bench for decision. It is for the larger Bench to consider whether it would not be appropriate to hear the various States also on this question considering the impact of a decision on the relevant questions. The papers be placed before the Hon'ble Chief Justice for appropriate orders. D