(2014) 01 BOM CK 0122

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 6966 of 2013

The Chalisgaon Municipal Council and Prashant Ramrao Deshmukh		APPELLANT
	Vs	
The State of Maharashtra and Others		RESPONDENT

Date of Decision: Jan. 29, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14 19(1)(g) 21 21-A 226
- Land Acquisition Act, 1894 - Section 11 6 6(2) 9
- Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965 - Section 2(20)
- Maharashtra Regional and Town Planning Act, 1966 - Section 113A 126 126(1) 126(1)(b) 126(1)(c)

Citation: (2014) 5 ABR 24 : (2015) 4 ALLMR 256

Hon'ble Judges: S.C. Dharmadhikari, J; Ravindra V. Ghuge, J

Bench: Division Bench

Advocate: R.N. Dhorde, instructed by Mr. V.R. Dhorde, for the Appellant; G.K. Naik Thigale, Additional G.P. for Respondent/State, for the Respondent

Final Decision: Dismissed

Judgement

S.C. Dharmadhikari, J.
Rule. Respondent Nos. 1, 3, 4 to 6 waive service. By consent, rule made returnable forthwith.

The petitioners have filed this writ petition under Article 226 of the Constitution of India, claiming a declaration that Section 49(7) and Section 127 of The Maharashtra Regional and Town Planning Act, 1966 (For short, the M.R.T.P. Act, 1966) are ultra-vires Article 14, 19(1)(g), 21, 21-A, 47 and 243(w) of the Constitution of India

and therefore, are liable to be struck down. They also claim a writ of certiorari or any other writ or direction to quash and set aside the communications dated 23/02/2010 and 17/04/2010, directing petitioner No. 1 to deposit 2/3rd amount of the compensation in respect of a proposed land acquisition. Prayer clause ''D'' of the writ petition reads as under:

Issue a writ of Mandamus, or any other appropriate writ, order or directions in the nature of writ of Mandamus directing the State Government to forthwith release the funds required for acquisition of lands reserved under the development plan of Chalisgaon Municipal Council for public purposes and for that purpose issue necessary orders.

2. The few facts, which are necessary to consider the submissions of Mr. Dhorde, the learned Senior Advocate, appearing for the petitioners are that the respondent No. 1 is a Local Authority within the meaning of Section 2(20) of the Maharashtra Municipal Council and Nagar Panchayats and Industrial Townships Act, 1965. It is also a Planning Authority u/s. 2(19) of the M.R.T.P. Act, 1966. Petitioner No. 2 is a resident of Chalisgaon Town. Respondent No. 1 is the State of Maharashtra whereas respondent Nos. 3 to 6 are the Authorities under the M.R.T.P. Act, 1966 and the Collector of the District. We do not see any reason for respondent Nos. 2 and 7, being impleaded as party respondents in this writ petition. Be that as it may, what has been alleged is that being a Planning Authority, petitioner No. 1 has to take steps to maintain the municipal area by properly planning it and ensuring development of the same. The Municipal Council has certain powers and obligations, which it has to carry out and for which funds are required. These are generated in the manner set out in paragraph Nos. 2 and 3 of the writ petition.

3. The essential grievance is that, one of the taxes namely Octroi duty has been abolished in the State. There is a Local Body Tax (L.B.T.), which is levied but presently no steps have been taken to levy, assess and recover the same in accordance with Law. Petitioner No. 1 Municipal Council has lost its main source of Revenue and Income and therefore, it finds it extremely difficult and onerous to fulfill the task and obligations in terms of the Municipal Law and the Planning Law. The scheme of the M.R.T.P. Act, 1966 Act has been set out and what is alleged is that the sanctioned development plan envisages designations, reservations and proposals for providing educational facilities, recreation, entertainment, health, medical and other facilities so also basic amenities. There is a development plan for Chalisgaon Municipal Council limits. That has been referred to in paragraph Nos. 8 and 9 of the writ petition.

4. What has been alleged is that the reservations cannot be implemented and carried out essentially because of the problem of funds. The Council wrote a letter to the Government to provide funds or grants so as to complete the acquisition in terms of the M.R.T.P. Act, 1966. However, the Land Acquisition Officer has been calling upon the Council to make funds available so as to pay compensation for an

acquisition and which is in relation to one of the lands, instance of which has been set out in paragraph No. 9 of the writ petition.

5. It has been alleged that several letters and detailed correspondence has followed from time to time, but the grants have not been released nor the revenue augmented. In these circumstances, the Municipal Council is constrained to question the legality and validity of the provisions, by which an obligation is cast on the Council to enforce the reservation or designation contained in the development plan within a specified period, by taking steps for acquisition of the land, on which there is a Reservation. If these steps are not taken within a specified period, then, the reservation lapses and the land is, then, deemed to be released from reservation.

6. The Learned Senior Advocate, therefore, has questioned the legality and validity of these two provisions namely 49(7) and Section 127 of The M.R.T.P. Act, 1966. Mr. Dhorde, submitted that after abolition of Octroi duty, it has become impossible for the Municipal Councils to generate funds or increase their revenue. Any Council finds it difficult to raise finances by recovering taxes other than Octroi. They are not enough to generate funds so as to fulfill the purpose of a development plan. If the public has to be provided with basic amenities and certain facilities, in terms of planning and development, then, revenue should be permitted to be generated by the Council for fulfilling these duties. In the absence thereof, these duties are too onerous and excessive and cannot be complied with. Therefore, the rigours of Section 127 are too difficult for the Councils to bear and hence this Court must declare the provisions to be unconstitutional and ultra-vires, as prayed above.

7. We are unable to accept any of these contentions and for more than one reason. Section 49(7) of The M.R.T.P. Act, 1966 reads thus:-

If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required u/s 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation, or, as the case may be, allotment, indication or restriction and shall become available to the owner of the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan

A bare perusal of same would indicate that it falls in chapter IV which is entitled as "Control of Development and use of land included in Development Plan." The Section obliges the Planning Authority or the Appropriate Authority to acquire land on refusal of permission or on grant of permission in certain cases. Sub-section 7 thereof cannot be read in isolation. The provisions of the M.R.T.P. Act, 1966 will have to be read together and harmoniously. Sub-sections of the said Section equally have to be read together and harmoniously with other provisions and Sections of the Act.

The Rule of Interpretation that no Section or sub-section or a part thereof should be seen out of context and read in isolation, is totally applicable here. Where any land is designated by a plan as subject to compulsory acquisition, or any land is allotted by a plan for the purpose of any functions of a Government or local authority or statutory body, or a land designated in such plan as a site proposed to be developed for the purposes of any functions of any such Government, authority or body, or any land is indicated in any plan as land on which a highway is proposed to be constructed or included, or any land which becomes incapable of reasonably beneficial use in its existing state or because the owner of the land is unable to sell it except at a lower price because of a designation, then, the owner or a person affected, may serve on the State Government within such time and in such manner, a purchase notice, requiring the Appropriate Authority to purchase the interest in the land in accordance with the provisions of the M.R.T.P. Act. Therefore, the purchase notice has to be served in certain cases and to take care of them and which are carved out by Section 49(1), clause (a) to (e). As to how the purchase notice has to be addressed and dispatched and what would happen after its receipt, is then provided by this Section. The notice has to be forwarded to the State Government and in terms of sub-section 3 of Section 49. The State may refuse to confirm the purchase notice and that is therefore, a satisfaction, which will have to be recorded and in terms of this subsection. However, if within a period of 6 (six) months of the date on which a purchase notice is served, the State Government does not pass any final order thereon, the notice shall be deemed to have been confirmed at the expiration of that period and sub-section 5 takes care of that contingency. The Sub-section earlier incorporated was deleted by the Maharashtra Act No. 6 of 1976 and by sub-section 7, on failure of the Appropriate Authority to make an application to acquire the land in respect of which the purchase notice has been confirmed as required u/s 126, would result in the reservation, designation, allotment, indication or restriction on the development of land shall be deemed to have lapsed and thereupon, the land shall be released from the reservation, designation or as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.

8. We do not see how this could be said to be an onerous, excessive or un-reasonable, unfair and unjust provision or which falls foul of the mandate of the Constitution. A balance has been struck by the Legislature when it permits acquisition of land in terms of the legal provision. However, that acquisition has to be within a specified period so as not to take away the rights of the owner in the immovable property or land. It is too well settled to require any reiteration that right to property may not be a fundamental right but it nevertheless is a legal right. No deprivation of the rights in property, therefore, is permissible and a reasonable restriction placed on the Planning Authority or Appropriate Authority to acquire the land cannot, therefore, said to be a provision preventing the Municipal Council from

exercising its powers under the Municipal Laws and the Planning Laws. The Learned Senior Advocate does not dispute that the Council is obliged to fulfill its obligatory and discretionary duties in terms of the Municipal Laws. Equally, being a Planning Authority, it has certain obligations and duties under the Planning Law. He does not dispute that the Council is duty bound to provide the residents all the basic amenities and facilities. The term "amenity" has been defined in the M.R.T.P. Act, 1966 u/s. 2(2) and which has been substituted by the Maharashtra Act 10 of 1994.

That definition reads as under:

"Amenity" means roads, streets, open spaces, parks recreational grounds, play grounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lighting, sewerage, drainage, public works and includes other utilities, services and conveniences.

9. A bare perusal thereof would indicate that it incorporates such of the matters and requirements, which would make the life of a human being purposeful and meaningful. Ultimately, right to life and liberty guaranteed by Article 21 of the Constitution of India does not envisage mere physical existence. It is well settled that the right to life guaranteed by the Constitution is the life of a human being. For making it complete and meaningful, a human being requires not only fresh and pure air, light, ventilation, medical and other assistance, but education, recreation facilities, sanitation, drainage, public works and includes other utilities, services and conveniences. The importance of planning and for the future is emphasized in the judgment of the Hon''ble Supreme Court in the case of Padma Vs. Hiralal Motilal Desarda and Others, . The Hon''ble Supreme Court held as under:-

29. Laws dealing with development planning are indispensable to sanitation and healthy urbanization. Development planning comprehensively takes care of statutory, manual, administrative and land-use laws hand in hand with architectural creativity. In the words of a well-known architect, development planning is the DNA of urbanization--the genetic code that determines what will get built. A development plan is essential to aesthetics of urban society. American Jurisprudence 2d (Volume 82, at page 388) states: ""'Planning'', as that term is used in connection with community development, is a generic term, rather than a word of art, and has no fixed meaning. Broadly speaking, however, the term connotes the systematic development of a community or an area with particular reference to the location, character, and extent of streets, squares, and parks, and to kindred mapping and charting. Planning has in view the physical development of the community and its environs in relation to its social and economic well-being for the fulfillment of the rightful common destiny, according to a "master plan" based on careful and comprehensive surveys and studies of present conditions and the prospects of futures growth of the municipality, and embodying scientific teachings and creative experience.

30. The significance of a development planning cannot therefore be denied. Planned development is the crucial zone that strikes a balance between the needs of large-scale urbanization and individual building. It is the science and aesthetics of urbanization as it saves the development from chaos and uglification. A departure from planning may result in disfiguration of the beauty of an upcoming city and may pose a threat for the ecological balance and environmental safeguards.

Mr. Dhorde does not dispute that the petition itself refers to Section 22 of The M.R.T.P. Act, 1966 and that provision sets out the contents of a development plan. That provision has been reproduced and the obligation, therefore, is not only to take steps so as to control the development but the plan shall generally provide the manner in which the utilisation of a land has to be regulated and also indicate the manner in which the development of the land shall be carried out. One has to plan the development and while planning for the same, one has to take care to incorporate in the development plan, purpose for the use of land such as industrial, residential, commercial, agricultural and proposals for designation of land for public purpose as enumerated in Section 22(a) to (k). It is thereafter that the permission to be granted for controlling and regulating the use and development of land within the jurisdiction of a Local Authority has to be made and that is a content or part of a development plan itself. In such circumstances, when the private lands are to be utilized for carrying out and implementing a development plan, by reserving or designating them for some purpose and specified in the plan itself, then, it is the obligation of the Authorities to take steps to acquire the land for such usage and purpose. That can be done by negotiation with the owner or that can be by compulsorily acquiring the land and paying him compensation. There cannot be any acquisition without payment of compensation and hence the obligation is that the land must not be locked indefinitely or for all times to come. There must be a definite time limit set to compel the Planning Authority or the Appropriate Authority to take steps to acquire the land. That serves a dual purpose. That gives some sort of certainty or predictability and the owner, therefore, knows that the land, if not acquired is going to be de-reserved and if steps in terms of Law are not taken in that behalf. Equally, the residents have an idea as to whether the amenities and facilities sought for and indicated in the plan, will be provided by the Planning Authority or Appropriate Authority. If this dual purpose is to be served and that is being served by the provisions in question, then, we do not see how the same, in any manner, violates the mandate of Article 14 of The Constitution of India.

10. Article 243(w) of the Constitution of India has been referred by Mr. Dhorde. The Municipalities have been conferred powers, authority and responsibility. Under the Constitution, a Municipal Council or Municipal Corporation cannot be expected to be conferred only with powers and authorities. No power and authority or no right comes without a corresponding obligation and duty. Therefore, the law envisages responsibility of the Municipalities and each one of which is subject to the Constitution of India. However, the Legislature of a State can, by law, endow the

municipalities with such powers and authority, as may be necessary to enable them to function as institutions of self government. That the law may also contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein with respect to the preparation of plans for economic development and social justice and performance of functions and implementation of schemes, as may be entrusted to them. They include those in relation to matters listed in the Twelfth Schedule. No Municipal Council can urge that it ought to be conferred only with powers and authority without any responsibilities and duties. That would completely defeat the constitutional guarantee. If the institution of self government has to function for the benefit and in the interest of the public, then, one cannot be heard to say that the provision in question falls foul of this mandate or is ultra-vires of Article 243(w) of the Constitution of India. There is no substance in this contention.

11. As far as Section 127 of The M.R.T.P. Act, 1966 is concerned, there, the owner is permitted to forward or address a notice and that notice enables him to either have his land acquired for the reservation, allotment or designation or if no steps are taken by the Planning Authority, the Development Authority or as the case may be, the Appropriate Authority to that effect, then, the owner or the person interested, can claim that the reservation is deemed to have lapsed and the land is released from reservation, allotment or designation.

Section 127 of The M.R.T.P. Act, 1966 reads as:-

(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force [or if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, the owner or any person interested in the land may serve notice, alongwith the documents showing his title or interest in the said land, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; and if within twelve 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.

(2) On lapsing of reservation, allocation or designation of any land under sub-section (1), the Government shall notify the same, by an order published in the Official Gazette.]

12. Once again, the salutary principle of interpretation, namely, a Statute, particularly a Planning Statute, must be construed bearing in mind the object and

purpose it seeks to achieve would apply. The Legislative intent, therefore, cannot be lost sight of and no provision can be seen out of context or in isolation and this principle will apply equally to the interpretation of this provision. This Section falls in Chapter VII titled as "Land Acquisition". That relates to compulsory acquisition of land needed for purposes of Regional Plan, Development Plan, or Town Planning Schemes etc. If the provision, conferring power to compulsorily acquire the land, was not coupled with the mandate to acquire it so as to fulfill the purpose or object of a development plan and the statute in question, then, possibly a complaint could have been made that what is conferred is only a power with no corresponding responsibility or duty. Therefore, acquisition of land, reserved in plan can be either by agreement by paying an amount agreed to and the owner then hands over the land for the required purpose, allocation or designation or 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 or the land owner''s interest to be determined by way of any of the principles laid down in the Land Acquisition Act, 1894, but in the form or shape of 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 FSI or TDR 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 acquisition of the land by resorting to the provisions of the Land Acquisition Act, 1894 and to facilitate the same, make an application to the State Government for acquiring the land. Thus, it is a futile to urge that because of lack of funds or lack of money, the Council or the Corporation is helpless and cannot provide to the residents or the people at large any amenity by carrying forward or implementing the proposals, designations and allocations in the Development Plan. The property or the land designated, allocated or reserved for such purpose can be acquired by an agreement with the owner, which may provide for making payment of the agreed amount or in lieu of such amount, granting the land owner or the lessor''s, the benefits in return of having the proposals or designations or allocations in the development plan implemented and carried out through him. The owner, therefore, benefits by having the unreserved or unallocated or un-designated portion free for other development in terms of the Planning Law and either he surrenders the balance portion for enabling the Planning Authority, Development Authority or Appropriate Authority to enforce or implement the proposals or reservations or he himself develops this amenity, facility and proposal and surrenders it free of costs and free from all encumbrances and in lieu of that, gets the FSI, additional FSI or TDR. Therefore, it is not as if, the land has to be acquired by taking recourse only to the Land Acquisition Act, 1894 or that is the only mode by which the proposals, designations or allocations can be implemented, enforced and carried out.

13. One of the mode is to acquire the land under the Land Acquisition Act, 1894 and for which possibly public funds or municipal funds are required. In these circumstances, one has as a look at Section 127, it would be correct to hold that the same carves out a obligation and at the same time endeavours to strike a balance to enable the owner or the person interested to have his land released from the reservation, allocation and designation. The same can not continue endlessly. Even the life of the plan is for a specified limit. It can be extended or in a new plan or a revised plan, the same proposals can be incorporated, yet, the Planning Authority cannot block the land for indefinite and uncertain period. The owner must have the opportunity to get his land released from reservation. Therefore, to save this provision from the vice of unconstitutionality that section 127 and the provisions of the like nature must find place in a Planning Law or in the scheme of a Town Planning Legislation. We do not see how such a provision can be said to be falling foul of the Constitutional mandate. More so, when acquiring the land by resorting to The Acquisition Act, 1984 is not the only mode so as to carry forward a development plan or to obtain the land for any public purpose. In this context, a reference can usefully be made to a recent decision of the Hon''ble Supreme Court in the case of Jayesh Dhanesh Goragandhi Vs. Municipal Corporation of Greater Mumbai and Others, .
The Hon''ble Supreme Court held as under:-

18. We have already stated that the only question that arises for consideration is whether the landowners can take recourse to Section 126 of the MRTP Act, once the TP Scheme is framed and the final scheme has been brought into force, vesting the land in the Corporation and providing compensation as provided in the Town Planning Scheme.

19. The scope and ambit of MRTP Act came up for consideration before a five Judge Bench of this Court in Girnar Traders Vs. State of Maharashtra and Others, and this Court has taken the view that the provisions of the MRTP Act relate to preparation, submission and sanction of approval of different plans by the concerned authorities which are aimed at achieving the object of planned development in contradiction to haphazard development. An owner/person interested in the land and who wishes to object to the plans at the appropriate stage, a self-contained adjudicatory machinery has been spelt out in the MRTP Act. Even the remedy of appeal is available under the MRTP Act with a complete Chapter being devoted to acquisition of land for the planned development. Providing adjudicatory mechanism is one of the most important facets of deciding whether a particular statute is a ''complete code'' in itself or not.

20. Various provisions of the Act comprehensively prescribe what and how the steps are required to be taken by the authorities under the Act, right from the stage of preparation of draft development plan to its finalization as well as preparation and finalization of all regional and town planning schemes. Right of the interested

person to raise objections, pre-finalization of the respective plans, is specifically provided. Besides providing right of objection to the owner of the land or property, which fall within the development plan, the State Act also provides machinery for finalization and determination of disputes between the authorities and private parties. Furthermore, a person is entitled to raise all disputes including the dispute of ownership. The Arbitrator nominated under the MRTP Act has the jurisdiction to decide all such matters. The jurisdiction of the Arbitrator is a limited one like estimation and payment of compensation in relation to plots in distinction to lands as defined under the Act within the four corners of the provisions of Sections 72 to 74 of the MRTP Act with reference to Section 97 of the State Act.

21. The MRTP Act is, therefore, a code in itself and has one predominant purpose, i.e., planned development. The principal purpose of the MRTP Act can be achieved without the aid of the Land Acquisition Act which has a very limited and restricted application. Whenever a land is required or reserved for any public purpose specified in any plan or scheme under the MRTP Act, the concerned authority may, with the exception of the provisions of Section 113A of the State Act, i.e. land designated under the Act connected with the development of the new town, acquire the land by different modes i.e. (a) by paying an amount agreed (by agreement); (b) in lieu of any such amount by granting the right specified u/s 126(1)(b); and (c) by making an application to the State Government for acquiring such land under the Land Acquisition Act. Section 126(2) lays down the procedure, primarily, as to how the application made u/s 126(1)(c) is to be dealt with by the State Government and, if it is satisfied, to make a declaration in the Official Gazette to the effect that the land is needed for a public purpose, in the manner provided in Section 6 of the Land Acquisition Act. Section 126(3) deals with the procedure to be followed after declaration contemplated u/s 126(2) has been published.

14. Lack of funds even otherwise can never be an answer. In a recent decision in the case of Shri Girish Vyas and Another Vs. The State of Maharastra and Others, , the Hon''ble Supreme Court had an occasion to consider the scheme of the M.R.T.P. Act, 1966. The Hon''ble Supreme Court has held as under:-

73. The provision of a statute are required to be read together after noting the purpose of the Act, namely that there should be an orderly development in the region, local authority as well as in the town area. The MRTP Act does not envisage a situation of conflict. Therefore one will have to iron out the edges to read those provisions of the Act which are slightly incongruous, so that all of them are read in consonance with the object of the Act, which is to bring about an orderly and planned development. The provision of Section 165 can not be read to mean a right to carry out a development contrary to the Development Plan, and in any case without a valid development permission particularly when the landowner had not taken any step in pursuance to the erstwhile T.P. scheme nor had objected to the changes brought in by the authorities by following the due process of law. The

submissions of Shri Naphade and Tulzapurkar with respect to the alleged conflict between T.P. and D.P. can not, therefore, be accepted.

74. The observations of O. Chinnappa Reddy J. in para 33 of the Judgment in Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, are instructive in this behalf-

33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place....

81. It was therefore contended on behalf of the developer that the order passed by the Government made a reference to a wrong provision of law. It was submitted that Section 47 was erroneously relied upon, and the order was in fact an order passed u/s 50 of the Act.

Section 50 reads as follows:-

50. Deletion of reservation of designated land for interim draft of final Development Plan.

(1) The Appropriate Authority (other than the Planning Authority), if it is satisfied that the land is not or no longer required for the public purpose for which it is designated or reserved or allocated in the interim or the draft Development plan or plan for the area of Comprehensive development or the final Development plan, may request-

(a) the Planning Authority to sanction the deletion of such designation or reservation or allocation from the interim or the draft Development plan or plan for the area of Comprehensive development, or

(b) the State Government to sanction the deletion of such designation or reservation or allocation from the final Development plan.

(2) On receipt of such request from the Appropriate Authority, the Planning Authority, or as the case may be, the State Government may make an order sanctioning the deletion of such designation or reservation or allocation from the relevant plan:

Provided that, the Planning Authority, or as the case may be, the State Government may, before making any order, make such enquiry as it may consider necessary and satisfy itself that such reservation or designation or allocation is no longer necessary in the public interest.

(3) Upon an order under sub-section (2) being made, the land shall be deemed to be released from such designation, reservation, or, as the case may be, allocation 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.

As can be seen, Section 50 provides for deletion of a reservation at the instance of an Appropriate authority (other than the planning authority) for whose benefit the reservation is made. Such is not the present case. Under sub-section (1) of Section 50, the appropriate authority has to be satisfied that the land is not required for the public purpose for which it is reserved. "Appropriate authority" is defined u/s 2(3) of the Act to mean a public authority on whose behalf the land is designed for a public purpose in any plan or scheme and which it is authorised to acquire. In the instant case, the acquiring body is PMC, and it will mean the general body of PMC. Assuming that the section applies in the instance case, the general body has to be satisfied that the land is no longer required for the public purpose for which it is designed or reserved. In the instant case, it is on the direction of the Minister of State that the Municipal Commissioner has given a report which has been used by the State Government to pass an order of shifting the reservation from F.P. No. 110. The officers of the Planning Authority as well as of the concerned Government department were not in favour of deleting the reservation. The Commissioner''s opinion could not have been treated as the opinion of PMC. Under certain circumstances the Municipal Commissioner can act on behalf of the Municipal Corporation, and those sections are specifically mentioned in Section 152 of the MRTP Act. Section 50 is not one of those sections and, therefore, the State Government could not have made any such order sanctioning the deletion of reservation on the basis of the report of the Municipal Commissioner. Section 50 is, therefore, of no help to the appellants.

91. In this connection, we must note Section 126(1) of the MRTP Act provides for three modes of acquisition of land for public purposes specified in the plan. The third mode is by making an application to the State Government for acquiring such land under the L.A. Act, and thereafter the land so acquired vests absolutely in the Planning Authority.

92. Section 128 of the MRTP Act strengthens the view that we are taking. Section 128 deals with a situation where the land is sought to be acquired for a purpose other than the one which is designated in the plan or the scheme. In that case provisions of the L.A. Act apply with full force.

93. After the declaration is made u/s 126(2) of the MRTP Act, the proceedings to determine the compensation follow the procedure as laid down under the L.A. Act until Section 11 thereof. A notice is given to the interested persons as required u/s 9 of the L.A. Act to lodge their claims to compensation for all the interests in such land. Thereafter, they are heard in the inquiry made by the Collector or the S.L.A.O., and after following the requirements as laid down in Section 11, the compensation is arrived at. The change of purpose of utilisation of the land acquired u/s 126 of the Act does not make any difference in this behalf. There is no prejudice caused to the landowners since the award is made only after affording them full hearing concerning their claims for compensation.

143. The significance of planning in a developing country cannot be understated. After years of foreign rule when we became independent, leaders of free India realized that for advancement of our society and for an orderly progress, we had to make a planned effort. In fact, even prior to independence the leaders of the freedom struggle had applied their mind to this aspect. The leaders of Indian Freedom Movement and particularly Pandit Jawaharlal Nehru, our first Prime Minister always emphasised democratic planning as a method of nation building and economic and social upliftment of Indian society. In March, 1931, the Indian National Congress at its Karachi Session passed a resolution to the effect that the State shall take steps to secure that ownership and control of the material resources of the community are so distributed as best to subserve the common good. Pandit Nehru drafted this resolution in consultation with Gandhiji and described it as a very short step in a socialist direction. In 1938, the National Planning Committee of the Congress was set up under the Chairmanship of Pandit Nehru who has been aptly described as "the Architect of democratic planning in India." The Economic Programme Committee of the Congress under his Chairmanship made a recommendation of setting up a permanent Planning Commission in 1947-48.

144. Shri H.K. Paranjape, (1924-1993) an eminent Economist and a former Member of Monopolies and Restrictive Trade Practices Commission and former Chairman of Railway Tariff Committee, in his monograph "Jawaharlal Nehru and the Planning Commission" (published by Indian Institute of Public Administration in September, 1964) notes that Nehru linked up the work of Planning Commission directly to the Fundamental Rights and the Directive Principles enunciated in the Constitution. Nehru always wanted to make sure that the objectives of the Planning Commission were well defined and well understood. In this article, the author further records as follows:-

When the National Development Council was discussing the Draft Outline of the Third Plan in September, 1960, he emphasized the importance of remembering what our objectives were and not to lose ourselves in the forest of details that a Plan had to deal with. Because, always when one considered the detail, one must look back on the main thing, how far it fitted in with the main issue; otherwise, it was out of place

Nehru believed in participation of different sections of society in framing of the Plan. The emphasis has always been amongst others to put land to the best use from the point of the requirements of our society, since land is a scarce resource and it has to be used for the optimum benefit of the society.

145. As stated above, we adopted the model of democratic planning which involves the participation of the citizens, planners, administrators, Municipal bodies and the Government as is also seen throughout the MRTP Act. Thus when it comes to the Development Plan for a city, at the initial stage itself there is the consideration of the present and future requirements of the city. Suggestions and objections of the citizens are invited with respect to the proposed plan, and then the planners apply their mind to arrive at the plan which is prepared after a scientific study, and which will be implemented during the next 10 to 20 years as laid down u/s 38 of the MRTP Act. The plan is prepared after going through the entire gamut under Sections 21 to 30 of the Act, and then only the sanction is obtained thereto from the State Government. That is why the powers to modify the provisions of the plan are restricted as noted earlier. If the plan is to be tinkered for the benefit of the interested persons, or for those who can approach the persons in authority, then there is no use in having a planned development. Therefore, Section 37 which permits the minor modifications provides that even that should not result into changing the character of the development plan, prior whereto also a notice in the gazette is required to be issued to invite suggestions and objections. Where the modification is of a substantial nature, then the procedure u/s 29 of the Act requiring a notice in the local newspapers inviting objections and suggestions from the citizens is to be resorted to. Even the deletion of reservation u/s 50 is at the instance of the appropriate authority only when it does not want the land for the designated purpose.

146. The idea is that once the plan is formulated, one has to implement it as it is, and it is only in the rarest of the rare cases that you can depart therefrom. There is no exclusive power given to the State Government, or to the planning authority, or to the Chief Minister to bring about any modification, deletion or de-reservation, and certainly not by a resort to any of the D.C. Rules. All these constituents of the planning process have to follow the mandate u/s 37 or 22A as the case may be if any modification becomes necessary. That is why this Court observed in paragraph 45 of Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others, as follows:-

45. Town and country planning involving land development of the cities which are sought to be achieved through the process of land use, zoning plan and regulating building activities must receive due attention of all concerned. We are furthermore not oblivious of the fact that such planning involving highly complex cities depends upon scientific research, study and experience and, thus, deserves due reverence.

(emphasis supplied)

Role of Municipalities

147. The municipalities which are the planning authorities for the purpose of bringing about the orderly development in the municipal areas, are given a place of pride in this entire process. They are expected to render wide ranging functions which are now enumerated in the constitution. They are now given a status under Part IX A of the Constitution introduced by the 74th Amendment w.e.f. 1.6.1993. Article 243W lays down the powers of the Municipalities to perform the functions which are listed in the Twelfth Schedule. For performing these functions, planning becomes very important. This Twelfth Schedule contains the following items:-

Twelfth Schedule

[Article 243W]

1. Urban planning including town planning.

2. Regulation of land-use and construction of buildings.

3. Planning for economic and social development.

4. Roads and bridges.

5. Water supply for domestic, industrial and, commercial purposes.

6. Public health, sanitation conservancy and solid waste management.

7. Fire services.

8. Urban forestry, protection of the environment and promotion of ecological aspects.

9. Safeguarding the interests of weaker sections of society, including the handicapped and mentally retarded.

10. Slum improvement and upgradation.

11. Urban poverty alleviation.

12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

13. Promotion of cultural, educational and aesthetic aspects.

14. Burials and burial grounds; cremations, cremation grounds and electric crematoriums.

15. Cattle ponds; prevention of cruelty to animals.

16. Vital statistics including registration of births and deaths.

17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

18. Regulation of slaughter houses and tanneries.

The primary powers of the Municipal Corporations in Maharashtra such as PMC (excluding some Municipal Corporations which have their separate enactments) and of the Standing Committees of the Corporations are enumerated in the BPMC Act. Coupled with those powers, the Municipal Corporations have their powers under MRTP Act. These are the statutory powers, and they cannot be bypassed.

The Responsibility of the Municipal Commissioner and the Senior Government Officers

148. The Municipal Commissioner is the Chief Executive of the Municipal Corporation. It is his responsibility to act in accordance with these laws and to protect the interest of the Corporation. The Commissioner is expected to place the complete and correct facts before the Government when any such occasion arises, and stand by the correct legal position. That is what is expected of the senior administrative officers like him. That is why they are given appropriate protection under the law. In this behalf, it is worthwhile to refer to the speech of Sardar Vallabhbhai Patel, the first Home Minister of independent India, made during the Constituent Assembly Debates, where he spoke about the need of the senior secretaries giving their honest opinions which may not be to the liking of the Minister. While speaking about the safeguards for the Members of Indian Civil Service (now Indian Administrative Service), he said-"...To-day, my Secretary can write a note opposed to my views. I have given that freedom to all my Secretaries. I have told them ''if you do not give your honest opinion for fear that it will displease your Minister, please then you had better go. I will bring another Secretary.'' I will never be displeased over a frank expression of opinion. That is what the Britishers were doing with the Britishers. We are now sharing the responsibility. You have agreed to share responsibility. Many of them with whom I have worked, I have no hesitation in saying that they are patriotic, as loyal and as sincere as myself."
(Ref: Constituent Assembly Debates. Vol. 10 p.50)

Now unfortunately, we have a situation where the senior officers are changing their position looking to the way the wind is blowing.

151. As we have seen, the MRTP Act gives a place of prominence to the spaces meant for public amenities. An appropriately planned city requires good roads,

parks, playgrounds, markets, primary and secondary schools, clinics, dispensaries and hospitals and sewerage facilities amongst other public amenities which are essential for a good civic life. If all the spaces in the cities are covered only by the construction for residential houses, the cities will become concrete jungles which is what they have started becoming. That is how there is need to protect the spaces meant for public amenities which cannot be sacrificed for the greed of a few landowners and builders to make more money on the ground of creating large number of houses. The MRTP Act does give importance to the spaces reserved for public amenities, and makes the deletion thereof difficult after the planning process is gone through, and the plan is finalized. Similar are the provisions in different State Acts. Yet, as we have seen from the earlier judgments concerning the public amenities in Bangalore (Bangalore Medical Trust (supra) and Lucknow (M.I. Builders Pvt. Ltd. (supra), and now as is seen in this case in Pune, the spaces for the public amenities are under a systematic attack and are shrinking all over the cities in India, only for the benefit of the landowners and the builders. Time has therefore come to take a serious stock of the situation. Undoubtedly, the competing interest of the landowner is also to be taken into account, but that is already done when the plan is finalized, and the landowner is compensated as per the law. Ultimately when the land is reserved for a public purpose after following the due process of law, the interest of the individual must yield to the public interest.

153. Having noted as to what has happened in the present matter, in our view it is necessary that we should lay down the necessary safeguards for the future so that such kind of gross deletions do not occur in the future, and the provisions of the Act are strictly implemented in tune with the spirit behind.

(i) Therefore, when the gazette notification is published, and the public notice in the local newspapers is published u/s 29 (or u/s 37) it must briefly set out the reasons as to why the particular modification is being proposed. Since Section 29 provides for publishing a notice in the ''local newspapers'', we adopt the methodology of Section 6(2) of the L.A. Act, and expect that the notice shall be published atleast in two daily newspapers circulating in the locality, out of which atleast one shall be in the regional language. We expect the notice to be published in the newspapers with wide circulation and at prominent place therein.

(ii) Section 29 lays down that after receiving the suggestions and objections, the procedure as prescribed in Section 28 is to be followed. Sub-section (3) of Section 28 provides for holding an inquiry thereafter wherein the opportunity of being heard is to be afforded by the Planning Committee (of the Planning Authority) to such persons who have filed their objections and made suggestions. The Planning Committee, therefore, shall hold a public inquiry for all such persons to get an opportunity of making their submission, and then only the Planning Committee should make its report to the Planning Authority.

(iii) One of the reasons which is often given for modification/deletion of reservation is paucity of funds, which was also sought to be raised in the present matter by the Municipal Commissioner for unjustified reasons, in as much as the compensation amount had already been paid. However, if there is any such difficulty, the planning authority must call upon the citizens to contribute for the project, in the public notice contemplated u/s 29, in as much as these public amenities are meant for them, and there will be many philanthropist or corporate bodies or individuals who may come forward and support the public project financially. That was also the approach indicated by this Court in Raju S. Jethmalani and Others Vs. State of Maharashtra and Others, .

161. The spaces for public amenities such as roads, playgrounds, markets, water supply and sewerage facilities, hospitals and particularly educational institutions are essential for a decent urban life. The planning process therefore assumes significance in this behalf. The parcels of land reserved for public amenities under the urban plans cannot be permitted to be tinkered with. The greed for making more money is leading to all sorts of construction for housing in prime city areas usurping the lands meant for public amenities wherever possible and in utter disregard for the quality of life. Large number of areas in big cities have already become concrete jungles bereft of adequate public amenities. It is therefore, that we have laid down the guidelines in this behalf which flow from the scheme of the MRTP Act itself so that this menace of grabbing public spaces for private ends stops completely. We are also clear that any unauthorised construction particularly on the lands meant for public amenities must be removed forthwith. We expect the guidelines laid down in this behalf to be followed scrupulously.

15. Thus lack of funds or lack of resources can never be said to be the reason for not taking steps to implement the proposals, allocations and designations in the development plan. As the Hon''ble Supreme Court has observed that one of the reason which is often given for modification/deletion of reservation is "paucity of funds". If there is any such difficulty, then, the planning authority must call upon the citizens to contribute for the project, in the public notice contemplated u/s 29, in as much as these public amenities are meant for them, and there will be many philanthropist or corporate bodies or individuals who may come forward and support the public project financially.

16. We are rather disturbed, pained and anguished to note that a Municipal Council has filed such a petition and is seeking to challenge the constitutional validity of a provision and which is incorporated in the Statute, which obliges it to plan the development of a city or an area within its jurisdiction. Once, it cannot avoid compliance with its duty and obligation and equally the constitutional responsibility, then it can never be said to be helpless and in matters of funds. It may be that the State has to step in and the State does not step in, is the complaint, but that does not mean that the Law is bad or un-constitutional or the responsibility and duty

need not be carried out and fulfilled or discharged in terms of the legal provisions.

17. We are of the view that the petition has absolutely no merit and despite our inviting attention of all concerned to the above judgment of the Hon''ble Supreme Court and equally the observations following the same, in a recent Division Bench judgment of this Court in the case of Ravikant Lakshminarayan Zanwar Vs. The State of Maharashtra and Others, , the challenge has been pursued. The Division Bench held as under:-

8. However, in terms of the statutory provisions some reservations have been made within the municipal limits of the Amravati Municipal Corporation. Hence, we had called upon the Commissioner of the Amravati Municipal Corporation to file his personal affidavit explaining why such reservations lapse because of total inaction resulting in Public Interest and Public purpose being affected. That affidavit was insisted in view of the spate of notices that have been received by the Corporation. The Corporation has in almost all the cases before this Court pleaded lack of finance and funds for initiation of acquisition process and acquiring the properties which have been reserved for public purposes. We think that it will not be appropriate, if the reservations of land for primary schools, play grounds, parks or other amenities and public purpose are allowed to lapse for want of funds. The explanation that has now been placed on affidavit is that, within the Municipal Corporation and in terms of the development plan which came into force from 25.02.1993, as many as 514 reservations were demarcated. By further notification, to that development plan, 10 more sites were included as reserved. Thereafter, a further notification came to be issued on 13.07.2010 and 17 more sites were demarcated. Thus, these are total reservations and designations for public purposes and their number is 541. Out of the same, 460 reservations are on private land and 81 reservations are on government/corporation land. The explanation that is provided is, majority of the population of Amravati is concentrated in about 60% of the city limits and the outskirts of the city are sparsely populated. About 40% of the reservations shown in the development plan of 1993 are located in the outskirts of the city which is still undeveloped because of lack of habitation. There are about 46 reservations sites situated on Government/Corporation land and they are to be developed by the Municipal Corporation. The Corporation has fully developed 17 of these reserved sites, and as far as the private lands are concerned, the Corporation has developed only 2 sites. 44 purchase notices have been received pertaining to 60 reservation sites and out of these 44 purchase notices, in respect of 31 notices, the statutory period has expired and out of this 31 notices, 23 land owners have already preferred cases seeking declaration u/s 127 of the 1966 Act. 12 cases have been already decided out of this 23 and 13 more purchase notices are received in respect of which the statutory period is yet to expire.

9. We do not understand how the Municipal Commissioner makes a statement that the Corporation is taking necessary steps for acquisition in some of the above cases

and on what basis. If there are financial constraints as stated, then, in passing a resolution, copy of which is annexed to the affidavit and expressing helplessness the Corporation, which is a planning authority, has failed to provide the amenities to the residents within the municipal limits in terms of its obligatory duties under the Bombay Provincial Municipal Corporation Act, 1949. The Corporation will have to make necessary arrangements of funds and we do not approve of the explanation that the Municipal Commissioner offers in as much as there are several reservations which can be implemented with participation from the public. Presently, in days of liberalization and globalization, innovative projects are under way in several Municipal Corporation areas. Play grounds and other amenities are developed with private participation or equally by matching grants from the State or other agencies. We do not see, how the Municipal Corporation pleads lack of funds while providing such amenities. Ultimately planning in terms of 12th Schedule of the Constitution of India is a projection for future. If there is no vision and vision document is never prepared, we do not see how the municipal corporation will be able to develop the reserved plots and lands. Ultimately the reservations and designations in the development plan should not remain on paper. They have to be carried to their logical end as they serve a public purpose and in public interest, that the Corporation should make arrangement and by offering other benefits as also monetary compensation, these reservations can be utilized. It is no answer that 410 private sites are to be developed by the corporation. If there is a proper planning, there is concern for the residents and interest of the public is at heart, then funds are never a problem and even the learned A.G.P. who appears for the State Government was unable to state as to how the Corporation pleads lack of funds. We are surprised that after such affidavits are filed repeatedly and their annexures speak for themselves, why the State does not intervene and set right the affairs. We therefore, expect that hereinafter the Municipal Corporation Amravati and Municipal Commissioner will abide by each of the statements that are made in the affidavit and when it is stated on oath that the Corporation is taking necessary steps for acquisition of the sites pertaining to 17 reservations on private lands and would ensure that the purpose of the 1966 Act and planning law is not defeated. We are of the further view that in this situation, the State Government should in its supervisory and controlling powers call for explanations as to why there is financial crunch and the reasons therefor. If the non-plan expenditure is enormous, then, the State needs to guide the Corporation how to minimize it. Equally in deserving projects, there must be financial participation of the State Government.

10. We would be failing in our duty if we do not impress upon the Amravati Municipal Corporation, its Commissioner and the State Government, the function and obligation that is to be discharged by them as Trustees of the public. In case of Pt. Chet Ram Vashist (Dead) by Lrs. Vs. Municipal Corporation of Delhi, , the Hon''ble Supreme Court has held as under:

Reserving any site for any street, open space, park, school etc., in a lay-out plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be the coloniser in the sanctioned layout plan.

As a result of the above discussion, there is no merit in the writ petition. It is dismissed. Rule is discharged. There will be no order as to costs.