Reliance Energy
Reliance Infrastructure Limited
Devidas Lane, Off SVP Road
Near Devidas Telephone Exchange
Borivali (W)
Mumbai 400 103, India

Tel: +91 22 3009 9999
Fax: +91 22 3009 8852
www.relianceenergy.in

CIN: L99999MH1929PLC001530

5th September 2015

The Principal Secretary,
Maharashtra Electricity Regulatory Commission
13th Floor, World Trade Center I,
Cuffe Parade
Mumbai 400 005

Respected Sir,

Sub: Case No. 182 of 2014 in the matter of Petition of Tata Power Co. Ltd. ("TPC") for Approval of Revised Network Rollout Plan.

1. RInfra is filing affidavit dated 03-09-2015 in response to the presentation made by TPC on 12-08-2015 and additional submissions filed on 19-08-2015 and 24-08-2015.

2. As directed by the Hon'ble Commission in its daily order dated 12-08-2015, TPC furnished us their submission by email in respect of "*Situation specific scenarios for network laying*" on 04-09-2015 at 23:47 hrs. TPC has also filed certain additional submissions on 02-09-2015.

3. The Hon'ble Commission has scheduled the hearing in Case No 182 of 2014 on 08-09-2015 at 11:30 AM. Due to paucity of time to file our response to the submissions made by TPC on 02-09-2015 and 04-09-2015 prior to the date of hearing on 08-09-2015, RInfra seeks additional time to file its submissions as may be permitted by the Hon'ble Commission during the hearing scheduled on 08-09-2015.

Yours truly,

(Kishor Patil)
For Reliance Infrastructure Limited

BEFORE THE
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION, MUMBAI

Case No. 182 of 2014

IN THE MATTER OF: Tata Power Company Limited

Vs.

BEST Undertaking & Ors.

AFFIDAVIT ON BEHALF OF RELIANCE INFRASTRUCTURE LIMITED.

I, Sujit N Rao, Dy.General Manager Legal of Reliance Infrastructure Limited ("RInfra") having office at Reliance Centre, 19, Walchand Hirachand Marg, Ballard Estate, Mumbai 400 038, do hereby solemnly affirm and state as under :

1. That I am the legal and constituted attorney of Reliance Infrastructure Limited, and I am fully conversant with the facts and circumstances of the case. I have been duly authorized and am, competent to affirm this affidavit on behalf of RInfra.

2. I say that the aforesaid matter was scheduled for hearing on 12th August, 2015 wherein, the Petitioner made a presentation on the Revised Network Rollout Plan and subsequently filed additional submissions dated 19-08-2015 and 24-08-2015 ..

3. The Hon'ble Commission by its daily order dated 12th August, 2015 was pleased to grant time to RInfra for filing its say on the presentation made by the Petitioner and file its response to submissions filed by TPC.

NOTARY
Name: REKHA TOLAT
Area: STATE OF MAHARASHTRA
Reg. No. 466
Expiry Date: 13.3.2017
STATE OF MAHARASHTRA

4. I say that, by the present Affidavit, RInfra is filing its detailed submission/say on the presentation made by the Petitioner and TPC's additional submissions dated 19-08-2015 and 24-08-2015, and requests the Hon'ble Commission to take on record the submission of RInfra.

5. RInfra's submissions to the presentation made by the Petitioner and its additional submissions dated 19-08-2015 and 24-08-2015 is more particularly set out in **Appendix –A** to this Affidavit. I say that, the contents of the said Appendix-A annexed hereto are true and correct to my knowledge and belief and is based on the information/records maintained by RInfra and I believe them to be true.

6. The present affidavit is bona fide and filed in the interest of justice.

Solemnly affirmed at Mumbai)
3rd day of September, 2015)

Before me,

Mulla & Mulla & Craigie Blunt & Caroe

Partner
Advocates for Reliance Infrastructure Limited

BEFORE ME
3/9/15
NOTARY
MAHARASHTRA STATE
S.NO. 4443

TOLAT & CO.
MISS. REKHA A. TOLAT, ADVOCATE
Yusuf Building, Loft Over Shop No. 1,
Ground Floor, 43, M. G. Road,
Mumbai - 400 001.

NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL

BEFORE THE MAHARASHTRA ELECTRICITY REGULATORY COMMISSION, MUMBAI

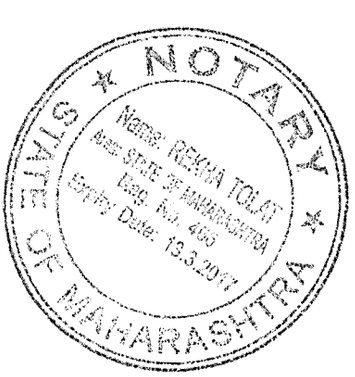
Case No. 182 of 2014

The Tata Power Company Limited

...Petitioner

AFFIDAVIT ON BEHALF OF RELIANCE INFRASTRUCTURE LTD

Dated this 3rd day of September, 2015



Mulla & Mulla & Craigie Blunt & Caroe,
Advocates for Reliance Infrastructure Ltd.
Mulla House, 51 M G Road, Fort
Mumbai 400 001

APPENDIX - A

SUBMISSIONS ON BEHALF OF RELIANCE INFRASTRUCTURE LIMITED (RINFRA), PURSUANT TO THE DIRECTIONS GIVEN BY THIS HON`BLE COMMISSION IN ITS DAILY ORDER DATED 12TH AUGUST, 2015.

1. The present submissions are being filed on behalf of RInfra pursuant to the Daily Order passed by this Hon`ble Commission dated 12-08-2015, in Case No. 182 of 2014. In view of the fact that the response to the presentation made by TPC (the complete hard copy of which was handed over to RInfra on 14-08-2015) and the contentions raised by TPC in its additional submissions would be a compendious and comprehensive response as the presentation and additional submissions filed by TPC are inextricably interlinked, RInfra is making a common response to the presentation and additional submissions.

2. The submissions made by RInfra in the present proceedings emanating from Case No. 182 of 2014, Case Nos 40 and 50 of 2014 are only for the limited purpose of considering the manner of implementation of the directions given by the Hon`ble Tribunal in the said judgment dated 28-11-2014 in Appeal Nos.246 of 2012 and 229 of 2012 and without prejudice to the submissions that RInfra is making and would be making in other proceedings including in Appeal No. 201 of 2014 pending before the Hon`ble Tribunal

3. The presentation of TPC is based on its interpretation of the judgment of the Hon`ble Tribunal in Appeal Nos. 246 and 229 of 2012 (hereinafter referred to as “the said judgment”). In the additional submissions filed by TPC, TPC has put forward its own interpretation on the basis of which its earlier presentation is made. Thus, RInfra hereinafter proceeds to respond to TPC’s additional submissions made on 19-08-2015 and 24-08-2015 and would thereafter respond to the presentation.

4. By separating the two submission i.e. dated 19-08-2015 and 24-08-2015, TPC has given a complete go by to the said judgment of the Hon`ble Tribunal in Appeal No. 246 of 2012. The judgment of Hon’ble Tribunal was given in the context of the peculiar situation

of Mumbai, the primary and fundamental basis of the said judgment being that TPC was facing difficulty in laying network in its area of supply in Mumbai as there were various constraints including physical constrains. It was in the light of this basic feature that the judgment proceeded and evolved the principle and methodology that in the common license areas of TPC and RInfra where a reliable grid of RInfra exists there should be no duplication of network and TPC must use only RInfra's network to effect supply. What TPC is now trying to do by filing two separate additional submissions is that in the submissions relating to 'observations', 'findings' and 'rulings', TPC is taking various paragraphs of the judgment, twisting certain observations out of context and purporting to confine the judgment to issues of cherry picking (irrelevant for the purposes of the present proceedings), laying down of network selectively to serve high end subsidizing consumers (irrelevant for the present proceedings except to ensure that cherry picking and selective laying of network do not happen in future), power of the Commission to issue directions under Section 23 (irrelevant for the purposes of the present proceedings) and whether the Commission has erred in continuing the interim arrangement (irrelevant for the purposes of the present proceedings). On the other hand in respect of submissions on new connection/new consumers, TPC is purporting to rely upon the provisions of the Act which it ignores for the previous submissions for if the provisions of the Act (Section 14, Proviso 6) are to be taken into consideration in the present proceedings, TPC is obliged to lay its network in the entire area of supply. Thus TPC is adopting contradictory stands.

5. The submissions made herein are without prejudice to one another.

Response to the additional submissions of TPC dated 19-08-2015 relating to 'observations', 'findings' and 'rulings' of ATE Judgment.

6. In sum and substance the contention of TPC in the said additional submissions is that irrespective of what is stated in the said judgment TPC is free to lay down "parallel network" as it chooses, when it chooses, to whom it chooses and in such manner as it wants to supply to new consumers/connections or

to cater to the demand of an existing consumer or in what TPC perceives as being “in consumer interest”.

7. In order to justify its said contention, TPC in the said additional submissions has gone into a detailed discussion, with a large number of judgments annexed to the said submissions on the issue of what is the “*ratio decidendi”* and “*obiter dicta*”. It is respectfully submitted that the said discussion is neither germane to the issues involved in the present Case nor does it answer the clarifications sought for by this Hon`ble Commission in its Daily Order as more particularly set out hereinafter:

a. Question of “ratio decidendi” or “obiter dicta” would arise when law or a legal principle laid down in a previous case is sought to be applied to a subsequent case. A “ratio decidendi” or “obiter dicta” is binding on all parties in future. The question of considering “ratio decidendi” or “obiter dicta” is totally irrelevant where the proceedings before this Hon`ble Commission are to implement specific directions given by the Hon’ble Tribunal based on certain findings of facts.

b. “Ratio decidendi” is a statement of the principle of law applicable to legal problems disclosed by the fact. In the present case there is no principle of law laid down in the said judgment nor is it propounded by either TPC or RInfra as having been laid down by the Hon`ble Tribunal in the said judgment. Hereto annexed and marked **Annexure “1”** is a copy of the judgment of the Supreme Court in the case of Girnar Traders vs State of Maharashtra & Others, reported in (2007) 7 SCC 555 which brings out the clear meaning of the two phrases “ratio decidendi” and “obiter dicta” and how they are to be construed. All the judgments annexed to the submissions of TPC relate to what constitutes a precedent in a judgment for the purpose of applying the said precedent to subsequent cases and are completely irrelevant for consideration in the present case. By emphasizing the issues of “ratio decidendi” and “obiter dicta” in TPC’s additional submissions, the requirement of differentiating between “observations”, “findings” and “rulings” has not been made, as all these three relate to the construction of the said Judgment in relation to its implementation and execution by

this Hon`ble Commission and not in the context of the said judgment being a precedent.

c. An observation in a judgment either for the purposes of considering whether the said observation is a precedent or ought to be implemented merely means a view, reflection, remark or statement. An observation is not a finding or a ruling or an obiter or a ratio.

d. A finding is a finding of fact between the two parties involved in a given proceeding. It finds a state of facts to exist or not to exist and is not an observation or a ruling or an "ratio decidendi" or "obiter dicta". A finding without the backing of a direction to execute such a finding would only hang in the air and would have no force of its own.

e. A ruling is a settlement or a decision of a point of law arising for the trial of the case without necessarily the force and solemnity of a judgment or an order.

8. In view of the above, it is respectfully submitted that this Hon`ble Commission has to ascertain the executable or the implementable part of the said judgment and the indicia or the factors laid down in the said judgment on the basis of which it requires to be implemented. For the sake of convenience, the said judgment itself in paragraph 80 gives a clear summary of its findings and categorically states what is directed by the said judgment to be implemented. Only some portions thereof are relevant in the present proceedings compendiously relating to Case No. 182 of 2014 and Cases Nos.40 and 50 of 2015, as set out hereinbelow:

a. there is no finding or declaration of law as respects the complaint of RInfra regarding cherry picking by TPC, i.e. whether TPC was in fact cherry picking or not. The only finding is that "*it is not established conclusively that Tata Power was intentionally trying to create a road block to avert change over of certain categories of consumers and indulging in cherry picking of change over consumers"*.

b. It is further held that not laying network to residential consumers who were availing supply from TPC on the network of RInfra and who were in the vicinity of network laid down by TPC is not cherry picking as it is in consumers interest. In other words, the said judgment clearly holds that where a consumer is in the vicinity of RInfra's network it is in the interest of the consumers that TPC does not lay

its network and only changes over. (This observation would also apply to new connections). Hon'ble Tribunal has also held that the possibility of TPC laying network selectively to high end consumers is not completely ruled out.

c. Thus paragraph 80 (i) and (ii) do not contain any directions but contain findings of facts as between the parties except the sentence "*Therefore, it is in the interest of consumers of Tata Power and RInfra that the change over consumers of Tata Power continue to get supply from Tata Power or RInfra even if a 32/22 kv sub-station of Tata Power is available in the vicinity"*. Thus, at the very least this contains a direction that where changeover consumers exists they shall not be switched over and such consumers shall always remain on RInfra's network.

d. Paragraph 80 (iii) contains an executable and implementable part viz. that directions given "*under paragraphs 58 to 61 regarding roll out plan"* of TPC only to areas "*where laying down of parallel network will improve reliability of supply and benefit of the consumers and directions for continuance of change over arrangement irrespective of category or consumption of consumers, commissioning of network where a substantial expenditure"* (Underlining Supplied) has been incurred by TPC in laying down network on the directions of State Commission, etc. It is further stated "*However, there shall be no restriction on any licensee to lay network for supply to new connections"*. Thus, keeping in mind the all pervading principles of development of the industry coupled with consumers interest the Hon'ble Tribunal has given certain directions which are required to be interpreted.

e. Paragraph 80 (iii) does not contain any ratio decidendi, any obiter dicta, any ruling, any finding or any observation. It contains directions pure and simple.

9. To summarize, the contents of paragraph 80 (iii) read with paragraphs 58 to 61 of the said judgment would mean and operate as under:

9.1. The basis of the directions in paragraphs 58 to 61 is premised on two findings: (i) that the reliable distribution network of RInfra is already existing in the area; and (ii) practical difficulties in laying down new network as stated by TPC itself. Based on these dual

premise it is first required to be ascertained whether a reliable network of RInfra exists in the area in which TPC by its proposed rollout plan desires to lay down its network. It is directed in the said para that TPC should not be allowed to maintain its right to lay down distribution network selectively even in the areas where reliable network of RInfra is existing. It is the specific finding in the said judgment at several places that RInfra has a reliable network (See paras 51,55,56,58 and 74). Thus, the said direction is two fold; (i) that TPC should not be allowed to maintain its right to and should not be allowed to lay down its network selectively (clearly to avoid cherry picking) and (ii) TPC should not be allowed to lay down its network in areas where a reliable network of RInfra is existing.

9.2. In view of the aforesaid, a direction is given that TPC should be restricted to lay down its network in areas where (i) laying down of parallel network would improve reliability of supply (which predicates the determination at the outset of whether reliable supply of RInfra exists or not); AND (ii) extending network by TPC would benefit consumers; AND (iii) extending supply to new consumers where such consumers seek connection from TPC.

9.3. From the aforesaid and adopting the principles enunciated by TPC in its additional submissions only for the sake of argument, the three condition are cumulative which, to adopt the phraseology of TPC would permit TPC to lay down its network only (i) where laying down of parallel network would improve the reliability of supply PLUS (ii) benefit the consumers PLUS (iii) the new consumers seek connection from TPC (This is relevant for new consumers as well).

9.4. Thus, this direction would mean that TPC can extend its network only to a new consumer provided it benefits the consumer and improves reliability and not otherwise. This would be clearly so as consumers interests would not benefit where laying down of parallel network in the vicinity where RInfra's reliable network already exists by TPC would entail the incurring of additional expenditure which will ultimately be loaded on to the consumers and would be contrary to the principles of efficient, economic and coordinate network on which TPC itself relies; and it is for that reason that Hon'ble Tribunal has given directions to restrict TPC

rollout plan only to "*such areas"* which would refer only to areas where all the three conditions are cumulatively satisfied viz. laying down of network would improve reliability of supply, benefit the consumers and new consumers seek connection from TPC. The permissibility to connect the new consumers on TPC network has to be read in conjunction with the said directions. (As to the meaning of "New Consumers/New Connections" separate submissions are being made hereinafter)

10. The further directions in paragraph 58 of the said judgment are that if such a course of action as directed by the Hon'ble Tribunal requires amendment of license conditions of TPC, the license should be amended after following due process of law. The rollout plan of TPC should be approved by this Hon'ble Commission only after hearing RInfra and the consumers and in the meantime TPC is restrained absolutely from laying down distribution network in the distribution area, to RInfra (a mandate which TPC is violating with impunity).

11. In paragraph 59 of the said judgment the further direction is that if TPC has made considerable investment in constructing distribution system "***in pursuance of the directions of the State Commission****"* and if the said distribution system is yet to be commissioned and capitalized then it should be allowed to commission and capitalize the same to feed the consumers as decided by the State Commission for which TPC is required if it so chooses to submit a proposal to the State Commission which the State Commission has to consider and decide after hearing the concerned parties, including RInfra. Thus, the directions contained in paragraph 59 categorized in seriatim would be as under:

i) TPC should "*have made considerable investment*" (the Hon`ble Commission has to consider what is meant by considerable investment);

ii) this investment should have been made in constructing a distribution system;

iii) such investment should have been made in pursuance of the directions of the State Commission and not otherwise;

iv) only such distribution system constructed with considerable investment pursuant to the directions of the State Commission is allowed to be commissioned and capitalized in future if TPC submits a proposal to the Commission and Commission decides upon the said proposal after hearing the concerned parties including RInfra. The said paragraph 59 does not relate to assets that may already have been commissioned and capitalized.

v) Thus the directions in paragraph 59 do not allow TPC to take over consumers on assets already commissioned and capitalized by it.

12. In paragraph 60 of the said judgment, the directions are that it is optional for the consumers who have already switched over from Tata Power to RInfra to remain on Tata Power if they so choose (It is precisely for this reason that TPC is indiscriminately attempting to switch over a large number of consumers without the sanction of the Hon`ble Commission and in the teeth of the restraint by the said judgment so as to present this Hon`ble Commission with a fate accompli.). The further direction in the said paragraph is that the switchover consumers of TPC can switchover back to RInfra.

13. Insofar as paragraph 61 is concerned TPC is directed to submit a rollout plan in accordance with the pre-set out directions set out in the previous paragraphs 58 to 60. TPC has not yet done so. TPC is restrained from laying down its distribution network till further orders of this Hon`ble Commission on the rollout plan as per directions given in the said judgment (in paragraphs 58 to 60), a direction which TPC is flouting. TPC is permitted to supply to existing consumers of RInfra only through RInfra's network by paying necessary charges i.e. to change over such consumers (as contradistinguished from switching over). There is an exception that there will be no restriction on TPC or RInfra to lay network for supply to new connections. New connections in the context of the present case and in view of the said judgment, would clearly mean new connections as mentioned in paragraph 58 viz. where laying down of parallel network would improve their reliability PLUS benefit the consumers PLUS the new consumers seek supply on the wires of TPC. Without the existence of the

preceding two conditions precedent, viz. laying down of parallel network would improve reliability of supply and would benefit new consumers, the directions that there shall be no restriction on TPC or RInfra to lay network for supply to new connections would not operate. In considering reliability, cost optimization is and would be one of the most relevant factors. For instance, if in the area covered by RInfra network or grid, a new connection is sought and the cost of providing new connection by merely augmenting RInfra network is much lower or vice versa, then the licensee whose network requires to be augmented will incur lower cost (capex) than the licensee who is required to lay totally new network and thus the new connection should be supplied by the licensee whose marginal cost to lay network to connect such customer is lower so as to optimize the total cost and protect consumer interest in accordance with the said judgment.. The underlying principle is that unnecessary cost should not be incurred so as to burden a consumer and ultimately operate to a disadvantage of the consumers. This is further clarified in the next direction in the very same paragraph that Commission will give approval for laying down network by TPC only in areas where there are distribution constraints and laying down of parallel network will improve reliable supply and benefit the consumers and that is also to be done after hearing RInfra and consumers. Thus, the three cumulative conditions mentioned in paragraph 58 are reiterated and reapplied to supply by TPC to new connections and similar principles are applied to network to be laid by RInfra. It is directed that the Commission is to devise a suitable protocol "*in this regard"* after following due procedure as per law which may entail change in license conditions of licensees.

14. In sum, the most relevant parts of the said judgment for the purposes of enforcement in the three cases being considered by this Hon'ble Commission are paragraph 80 (ii) and (iii) read with paragraphs 58 to 61 and 74 of the said judgment. It is these paragraphs that have to be implemented by this Hon`ble Commission as per the directions. In the respectful submission of RInfra the question of observations being in the nature of "ratio decidendi" or "obiter dicta" does not arise.

15. RInfra has made its submissions on the issues of "ratio decidendi" or "obiter dicta", "observations", "findings" and

"rulings" and their respective legal implications. RInfra respectfully submits that the said judgment should be implemented in terms of its directions as set out hereinabove and this Hon`ble Commission should base its order accordingly. RInfra humbly submits that this Hon`ble Commission would have to pass an order and not "provide guidance" as is repeatedly requested by TPC.

16. With specific reference to the additional submissions of TPC dated 19-08-2015, It is respectfully submitted as under:

16.1. The submissions made in paragraph 5 to 8 only put forward the interpretation of TPC of what is a "ratio decidendi" and "obiter dicta". RInfra had already made its submissions in respect thereof hereinabove. RInfra will refer to the various judgments annexed by TPC to the said submissions. RInfra submits that the said paragraphs and the judgments cited therein and annexed to the said submissions are not germane to the issues in the present case.

16.2. The rest of the additional submissions of TPC is an attempt to give a completely different colour to the clear and unequivocal directions of the Hon`ble Tribunal than the one which is clearly contained therein.

16.3. With reference to paragraphs 9, 10 and 11 of the additional submissions, the same are reproduction of previous proceedings and RInfra will refer to the same when produced.

16.4. With reference to paragraph 12 of the additional submissions, it is respectfully submitted that the same is an interpretation of the issues before the Hon`ble Tribunal while considering the appeals forming the subject matter of the said judgment. RInfra denies that the issues were as set out in paragraph 12.

16.5. With reference to paragraph 13 of the additional submissions, the issue of cherry picking in the past or otherwise by TPC is not relevant in the present case and while not admitting the interpretation put to the said findings in paragraph 13 by TPC,

RInfra will refer to the same when produced. Additionally the most important finding on the said issue of cherry picking is contained in paragraph 50 of the said judgment which reads: "*In the light of the above discussions we feel that it is not established conclusively that Tata Power is laying network selectively for high end and subsidizing consumers.* ***However, such possibility is not completely ruled out***" In other words the Hon`ble Tribunal has held that it cannot say definitely whether TPC was laying network selectively or not but it cannot also say that TPC was not laying network selectively.

16.6. With reference to paragraphs 14 and 15 of the additional submissions, the contents thereof are not relevant for the purpose of the present proceedings. As to what are passing observations and what are not passing observations is a matter of submissions which the parties would make at the time of hearing.

16.7. With reference to paragraph 16 of the additional submissions, RInfra denies the contention of TPC that what is stated in paragraph 16 (a) to (g) are the findings of the Hon`ble Tribunal.

16.8. With reference to paragraph 17 of the additional submissions, RInfra has summarized what in its submissions are the directions of the Hon`ble Tribunal hereinabove and denies the contents of paragraph 17 insofar as what is stated therein is contrary to or inconsistent with what is stated herein.

16.9. With reference to paragraph 18 of the additional submissions, RInfra does not admit the rest of the discussions are passing observations and will make submissions at the time of oral hearing on the contents of the said judgment.

16.10. With reference to paragraphs 19 and 20 of the additional submissions, RInfra denies the contents thereof as it pertains to TPC's interpretation of the findings and directions of the Hon`ble Tribunal and will make its submissions at the time of oral hearing.

16.11. With reference to paragraph 21 of the additional submissions, it purports to contain a declaration of the law as it exists and RInfra has no submission to make in that behalf.

16.12. With reference to paragraph 22 of the additional submissions, it is denied that the Hon`ble Tribunal did not decide the factual aspect of reliability or lack of it in RInfra's network. Insofar as paragraph 22 (a) is concerned, the Hon`ble Tribunal has categorically given a finding in paragraph 58 of the said judgment as under:

"58. Laying down of parallel network in a congested metropolitan city like Mumbai where a reliable distribution network is already existing is to be viewed differently from situation in other areas in the country where there are deficiencies in the existing distribution network resulting in constraints in maintaining a reliable supply to the existing consumers and extending supply to new consumers.....
..... Tata Power should therefore, be restricted to lay down its network only in areas where laying down of parallel network would improve the reliability of supply and benefit the consumer and also for extending supply to new consumers who seek connection from Tata Power....."

The contents of paragraph 58 of the said judgment are not mere observations as alleged. There was no question of declaring the law on Universal Service Obligations in terms of the Electricity Act as TPC had itself repeatedly and emphatically contended that it was not possible for it to lay its network in the entire area of supply common with that of RInfra and consequently the judgment gave certain situation specific directions.

16.13. With reference to paragraph 23 of the additional submissions, it is denied that the Hon`ble Tribunal has left the decision qua the developments of the network with multiple licensed areas for consideration of this Hon`ble Commission while approving the network rollout plan of TPC and/or further development/augmentation of RInfra network. The Hon`ble Tribunal has given clear directions in the said judgment which this Hon`ble Commission is bound to follow while approving the

network rollout plan of TPC. The Tribunal has not given any guidelines but has given specific directions. So far as the reference of judgment of MCGM vs MERC & Others, reported in (2015) 2 SCC 431 is concerned, paragraph 28 thereof is relevant and is quoted hereinbelow:

"28. Before we part with we would like to make it clear that there is a dispute between TPC and R-infra) (respondent No.9) which is the subject matter of Civil Appeal Nos. 4667-68/2013. RInfra is a distribution licensee in suburban Bombay where TPC is also a licensee. Both supply electricity to different consumers. Dispute is between them with regard to cross subsidiary surcharge (CSS) payable by consumer taking supply from TPC or R Infra network. We make it clear, by way of abundant caution, that we have not touched upon the said dispute and obviously so as even otherwise the subject matter in the instance case is totally different. Therefore Civil Appeal Nos.4667-68/2013 shall be decided on its own merits."

The said judgment thus specifically excludes the situation of TPC qua RInfra. The entire attempt of TPC in paragraph 23 is to negate the directions of the Hon`ble Tribunal in the said judgment.

16.14. With reference to paragraph 24 of the additional submissions, the submissions made by TPC therein are denied. It is denied that protection of consumers interest is paramount in terms of statutory framework. This is contrary to the statute, various judgments of the Hon`ble Tribunal as well as the specific findings given inter-parties in the said judgment particularly in paragraph 58. The directions of the Hon`ble Tribunal clearly modulate the various rights and obligations inter-parties. The entire objective of TPC's interpretation of the contents of paragraph 58 is that TPC wants an unfettered rights to lay its network as and when it choose, where it choose and to whom it chooses, which interpretation is denied. If what TPC contends is allowed it will result in creating monopoly in favour of TPC which will ultimately be contrary to overall consumers interest in the area of supply.

16.14.1. It is the contention of TPC that as per the said judgment in Appeal No 246 of 2012 there is no restriction on laying of

parallel network to cater to the demand by an existing consumer, to supply to new consumer and such parallel network to be laid only if there is no reliable network or laying of network improves reliability, no physical constraints and it is in consumer interest. It is further submitted by TPC that consumer has to ultimately decide the distribution licence from whom he wishes to avail supply. The Consumer has a choice to elect both its source (Supply Licensee), mode of supply (Wires Licensee).

16.14.2. It is submitted that contention of TPC as mentioned above is that it has an USO obligation and such USO obligation is met based on the choice of consumer, wherein consumer will decide supply licensee, wires licensee or both with a caveat that if any consumer chooses wires and supply of TPC, but there are physical constraints in reaching to that customer then TPC is not obligated to lay wires and can ask a customer to take supply from TPC on the wires of RInfra as per the said judgment. It is submitted that TPC cannot have such liberty to lay wires as it chooses, when it chooses, to whom it chooses. Further, it cannot be intention of the said judgment to provide such a free will to a licensee where it can take advantage of having an existing RInfra network and duplicate the network wherever it chooses under the garb of consumer choice.

16.14.3. Assuming while denying, that the contentions of TPC are valid on combined reading of various provisions of EA03, Rules and Regulations made there under and as per said judgment, it can be inferred that if all existing RInfra/new consumers ask for TPC network, TPC will be able to lay to only 40% of the consumers and rest 60% (almost all slum and low end consumers) can be denied under the guise of ATE judgment that in view of physical constraints, TPC is not in a position to lay network and these 60% of consumers should continue to take supply on RInfra network only. It is submitted that this is not and cannot be the intent of the said judgment wherein only 40% of the consumer enjoy the choice and remaining 60% are denied the same, due to inability of TPC to connect to such consumers. Also, TPC will duplicate the network for 40% of consumers which will make RInfra network redundant and stranded resulting in increase of the wheeling charges of remaining RInfra consumers due to

depletion of consumer base and wheeling charges of consumers of TPC will also increase due to addition of high cost duplicate network. It is further submitted that such consumers who have a choice of taking supply from TPC will burden remaining consumers. In view of the aforesaid following paragraphs of the said judgment are relevant and are reproduced herein below for ready reference:

"74. The Act has mandated the State Commission to protect the interests of the consumers. The State Commission, while giving any direction to the licensee is bound to ensure that such direction is in the interests of the consumer. Tata Power has expressed difficulties in laying down parallel network in the common licence area with RInfra. Laying of parallel network in every nook and corner of the city ***irrespective of the requirement and cost*** *and where a reliable distribution system of RInfra is already existing would not be in the interest of the consumers of both Tata Power and RInfra as the existing network can be used for changeover.* ***Wheeling charges of the Tata Power would increase due to un-necessary CAPEX and wheeling charges of RInfra would also increase due depletion of the consumer base****. In changeover, RInfra recovers wheeling charges from changed over consumers and its consumer base, for evaluating wheeling charges, would remain intact.*

75. In this regard we are of the view that the approach adopted by the State Commission in case number 113 of 2008 dated 15.6.2009, ruling that incurring heavy capital expenditure for the network roll-out is not the only option available to Tata Power in its efforts to supply electricity to different consumers in its licence area, and the provisions of the EA 2003 relating to Open Access and the provisions of the MERC (General Conditions of Distribution Licence) Regulations, 2006 relating to use of the distribution network of another distribution licensee, need to be explored by Tata Power, ***so that the cost is optimised****, was the correct approach."*

16.14.4. It is submitted that if TPC contentions are upheld and is allowed to lay duplicate network to only 40% of high end consumers will

not only lead to undue commercial advantage and cherry picking by TPC. In the said judgment, Hon'ble Tribunal has directed that Hon'ble Commission, in consumer interest, has to ensure no undue commercial advantage is gained by TPC by selectively laying down network to cater to only high end consumers and interest of RInfra has to be safeguarded to avert any cherry picking by TPC for switchover consumers.

16.14.5. It is submitted that Hon'ble Tribunal in the said judgment has proceeded on the footing that TPC is unable to lay network for connecting each consumer to fulfill USO obligation of a distribution licensee. Relevant extract of the said judgment are as given below:

"50. In the light of above discussions we feel that it is not established conclusively that Tata Power in laying network selectively for high end subsidizing consumers. However, such possibility is also not completely ruled out. ***Tata Power has made submissions regarding difficulties in laying down the distribution network due to space constraints and problem in getting permission from the Municipal Authorities for digging for laying cables. Difficulties in laying service line, installing transformers in the premises of the consumers and space constraints for metering arrangements are also brought to our notice****.*

51. ***While directing Tata Power to lay down duplicate network in the licensed area where RInfra's network is existing and changeover consumers are availing supply through RInfra's network,*** *it would be necessary to examine the practical difficulties in a congested metropolitan city where a reliable distribution system of RInfra is already existing. In the congested areas there are problems in laying down distribution network and installing switch gear, transformers and metering arrangement at consumers premises where the switchgear, transformer and metering arrangement of one licensee are already existing. In Multi storied buildings, there may be different types of consumers and mix of consumers (commercial and residential) having high or low energy consumption.* ***Some of the consumers may find it beneficial to take supply from the other***

licensee. However, it may not be practically possible to switch over the selective consumers due to non-availability of space for putting a second transformer, associated cables, switches and meters by the other licensee*.*

52. Laying down of parallel network in a congested metropolitan city like Mumbai poses many physical constrains. Even if it is to be done by using entire underground cables/sub-stations digging of areas will pose numerous difficulties including getting approvals from the municipal authorities. ***Even if the parallel distribution network is laid in and around a cluster, it will be at an extremely high cost, which will be ultimately borne by the consumers. The cost of laying a distribution network in a congested metropolitan city will be much more than the normal cost. In view of the difficulties in laying the LT network, there will always issues regarding selective laying down of network by Tata Power and cherry picking the subsidizing consumers and not providing connectivity to the low end consumers****. Laying down of network in the slums will extremely difficult.* ***It may not be possible to lay down network and service line, etc. for the second licensee in certain areas. Therefore, some consumers particularly the low end consumers, even if they want to switch over to Tata Power will not be able to do so due to physical constraints.***

16.14.6. It is submitted that Hon'ble Tribunal in the said judgment by taking into consideration the cost involved in laying duplicate network, physical constraints in laying network, possibility of selective laying down of network and Cherry Picking the subsidising consumers by TPC, has held that it is in overall interest of consumers of TPC and RInfra to continue to get supply from TPC on RInfra network where RInfra network exists and vice versa. Hon'ble Tribunal has clearly held that TPC can supply to existing consumers of RInfra only on RInfra network with exception to improve Reliability and Para 59 of the said judgment where TPC has made considerable investment pursuant to directions of Hon'ble Commission. Relevant extract of the said judgment are reproduced herein below:

*"56. Therefore, in the circumstances of the present case where a reliable distribution system of RInfra is already existing and physical constraints in laying down of network by Tata Power and very high cost involved **i**n the same, **it is in the overall interest of consumers of Tata Power and RInfra that the changeover consumers continue to get supply from Tata Power on the RInfra's network.** It will also be convenient and economical for the consumer to changeover back to RInfra in case RInfra's tariff becomes more attractive in future**.***

*61. .....However, **Tata Power can supply power to the existing consumers of RInfra** irrespective of category of consumer on the request of the consumers **only through RInfra's network** by paying the necessary wheeling charges as well as the other compensatory charges including the cross subsidy charges to RInfra. .....*

*80 (ii) ..... Therefore, it is in the interest of consumers of Tata Power and RInfra that the **changeover consumers of Tata Power continue to get supply from Tata Power on the RInfra, even if a 33/22 kV sub-station of Tata Power is available in the vicinity**....."*

16.14.7. It is submitted that overall objective of the said judgment is cost optimisation in consumer interest and use RInfra's reliable network only to supply to RInfra existing consumers and TPC network only to supply to TPC existing consumers.

16.14.8. In view of the aforesaid TPC's contention that it can also supply to existing consumers of RInfra is denied and without any basis. Hon'ble Tribunal in the said judgment in consumer interest, to avoid extra burden on consumers due to duplication of network has restricted TPC and RInfra to not lay network to consumers where there is already existing network. This in the opinion of the Hon'ble Tribunal and rightly so will require amendment of Licence of both TPC and RInfra.

17. In the circumstances it is respectfully submitted that this Hon`ble Commission may be pleased to direct TPC to present the rollout

plan strictly in consonance with the directions of the Hon`ble Tribunal as stated and submitted hereinabove by RInfra.

Response to the additional submissions of TPC dated 24-08-2015 relating to issue of "New Connection/"New Consumer".

18. The meaning of the term "new connection"/"new consumers" has to be read and defined in the context of and in the light of and directions given in the said judgment of the Hon'ble Tribunal. It cannot be that for part submissions reference is to be made to the judgment and in respect of other part the said judgment is to be ignored. Either the said judgment is to be applied as a whole or not at all (a course at present not permissible).

19. In regard to new connection/new consumers the following in the said judgment is relevant.

"58. Laying down of parallel network in a congested metropolitan city like Mumbai where a reliable distribution network is already existing is to be viewed differently from situation in other areas in the country where there are deficiencies in the existing distribution network resulting in constraints in maintaining a reliable supply to the existing consumers and extending supply to new consumers. .....Tata Power at the same time cannot maintain its right to lay down distribution network selectively even in areas where a reliable network of RInfra is existing. Tata Power should therefore, be restricted to lay down its network only in areas where laying down of parallel network would improve the reliability of supply and benefit the consumer and also for extending supply to new consumers who seek connection from Tata Power. Tata Power's Rollout Plan should therefore, be restricted to only such areas... .

61. ..... However, Tata Power can supply power to the existing consumers of RInfra irrespective of category of consumer on the request of the consumers only through RInfra's network by paying the necessary wheeling charges as well as the other compensatory charges including the cross subsidy charges to RInfra. However, there shall be no restriction on Tata Power or RInfra to lay network for supply to new connections.....

74. The Act has mandated the State Commission to protect the interests of the consumers. The State Commission, while giving any direction to the licensee is bound to ensure that such direction is in the interests of the consumer. Tata Power has expressed difficulties in laying down parallel network in the common licence area with RInfra. Laying of parallel network in every nook and corner of the city irrespective of the requirement and cost and where a reliable distribution system of RInfra is already existing would not be in the interest of the consumers of both Tata Power and RInfra as the existing network can be used for changeover. Wheeling charges of the Tata Power would increase due to un-necessary CAPEX and wheeling charges of RInfra would also increase due depletion of the consumer base. In changeover, RInfra recovers wheeling charges from changed over consumers and its consumer base, for evaluating wheeling charges, would remain intact.

80 (iii) In view of the practical difficulties in laying down parallel network in Mumbai as pointed out by Tata Power we have given some directions under paragraphs 58 to 61 regarding restricting the Roll out Plan of the Tata Power only to the areas where laying down of parallel network will improve the reliability of supply and benefit the consumers and directions for continuation of changeover arrangement irrespective of category or consumption of consumers, commissioning of network where a substantial expenditure has been incurred by Tata Power in laying down new network on the directions of the State Commission, consumers who had already switched over to Tata Power, laying down network for providing new connection, changeover and switch over protocol, change in licence conditions of the licensees, etc. However, there shall be no restriction on any licensee to lay network for supply to new connections. The State Commission is also directed to decide the detailed protocol for switchover and changeover after hearing all concerned."

From the aforesaid it is clear that TPC has no freedom to lay network to a new connection or a new consumer in any and every area as it chooses.

20. The definition purported to be given by TPC to the term new connection / new consumers is as follows:

The term 'New Consumer'/ 'New Connection' includes:

(a) Any person who has made an application for supply of power and whose premises is, for the time being, not connected to the works of the distribution licensee for receiving supply of electricity and also includes a person whose premises have been permanently disconnected by a licensee.

(b) person who has made an application for supply of power and those premises is, for the time being, connected to the works of the distribution licensee for only receiving temporary supply of electricity.

(c) Any other person/ premises as may be decided by the Hon'ble Commission from time to time. (Underlining Supplied)

21. From the aforesaid it is clear that TPC wants to pick and choose and lay network selectively in complete disregard of an existing reliable network in the area.

22. TPC has propounded not an exhaustive but a inclusive definition for new connection/new consumers which leaves it open to TPC to lay to any consumer without circumscribing the parameters of the definition

23. TPC states that New Connection/New Consumer would include "*any person who has made an application for supply of power and whose premises is for the time being not connected to the works of the distribution licensee for receiving supply of electricity and also include a person whose premises has been permanently disconnected by a licensee*". The aforesaid interpretation would enable TPC to persuade an existing customer of RInfra to approach RInfra and request for being permanently disconnected from RInfra. Such a consumer would be a consumer who is for the time being not connected to the works of RInfra or a person whose premises has been permanently disconnected by RInfra in pursuance of an application by such a consumer. In the submission of TPC such a consumer can be connected by TPC to TPC's supply by laying TPC's wires from anywhere to anywhere

inspite of the fact that a reliable network of RInfra exists. This completely negates the judgment and establishes the intention of TPC to selectively lay its network and to cherry picking. This interpretation of TPC is denied.

24. The second category TPC wants to include in the definition of new connection / new consumers is as follows:

(b) Any person who has made an application for supply of power and those premises is, for the time being, connected to the works of the distribution licensee for only receiving temporary supply of electricity.

The aforesaid clearly negates the binding directions of the judgment. For the purpose of temporary supply there is already an established reliable connection and network of RInfra. Thus, a consumer who applies for temporary connection to RInfra may draw such power either from the established reliable connection and network of RInfra or RInfra would have laid a reliable network. If such a consumer disconnects from RInfra, TPC would have to lay fresh network to such a consumer which is completely contrary to the findings and directions of the said judgment. TPC can persuade consumers to disconnect from RInfra, then claim that such a consumer falls in the category of a new connection / new consumer and then connect to such a consumer.

25. The third category of new connection / new consumers propagated by TPC is as under:

(c) Any other person / premises as may be decided by the Hon'ble Commission from time to time

There is no guidance or guidelines given as to what are the criteria that the Commission may adopt for the purpose of deciding "*any other person / premises".*

26. The proposed purported definition of new connection / new consumers is completely at variance with and diametrically opposite to the findings and directions in the said judgment which are based on:

(i) the practical difficulties in congested metropolitan city where a reliable distribution system of RInfra is already existing;

(ii) practical impossibility to switch over the selective consumers due to non-availability of space for putting a second transformer, associated cables, switches and meters by the other licensee:

(iii) enormous difficulties including getting approvals form Municipal authorities;

(iv) extremely high costs of laying network, particularly in congested areas which will be ultimately borne by consumers.

(v) issues regarding selective laying down of network by TPC and cherry picking the subsidizing consumers and not providing connectivity to low end consumers;

(vi) extreme difficulty in laying down of network in the slums

(vii) impossibility to lay down network and service line, etc. for the second licensee in certain areas;

(viii) redundancy of parallel network to the extent of 50% of the total network of RInfra and Tata Power and the cost of stranded distribution system being borne by the consumers of Mumbai;

(ix) if some of the consumers were migrated to Tata Power using the RInfra's network (change over consumers) switch over to Tata Power the RInfra's network will become redundant for which it was earlier getting wheeling charges from the change over consumers, the fixed charges of the redundant system of RInfra which were earlier earning revenue will then be borne by consumers of RInfra;

27. From the aforesaid and several other findings in the said judgment it is clear that new connection / new consumers can only mean that such a consumer has never been connected to the distribution system of any licensee and is seeking connection for the first time. Further, the aforesaid findings indicate that preventing high cost of network duplication in an area is the ultimate consideration and so all new connections in a given area must be supplied by the licensee which has an existing reliable network in such area and whose incremental cost of laying network to connect such new consumers is lower.

28. If the contentions of TPC were to be accepted it would mean that in a slum in the centre of the city where a reliable network of RInfra exists, and where RInfra has been continuously supplying electricity, a slum redevelopment scheme takes place and new towers come up, TPC can lay its entire network right from putting up second transformers, associated cables, switches and meters and get its line to such transformers from far away (this is the claim of TPC while putting forward Brown Field projections). This completely negates the said judgment.

29. With specific reference to the additional submissions dated 24-08-2015, RInfra submits as under:

30. With reference to paragraphs 1 to 5 of the said submissions, they do not require any reply.

31. With reference to paragraph 6 of the said submissions, the same is a repetition of a part of paragraph 24 of TPC's additional submissions dated 24-08-2015 which has already been replied hereinabove and RInfra denies all that is contrary to or inconsistent with what is stated therein. It is denied that there is no restriction on laying parallel network as alleged or at all. It would be clearly contrary to the said judgment, to the consumers interest and would result in enhancement of burden on the consumers if TPC is allowed to lay network to what TPC defines as a new consumers or a new connection inspite of there being existing in the same area reliable network of RInfra.

32. With reference to paragraph 7 of the said submissions, it is denied that the Hon`ble Tribunal has not laid down any guidelines/restrictions in laying of parallel network for supplying electricity to new connection/new consumers catering to the demand of existing consumers or laying of parallel network in consumers benefit. The Hon`ble Tribunal has imposed specific restriction and if the interpretation as put forward by TPC in paragraph 7 is accepted, TPC would get carte blanch to lay network indiscriminately once a consumer demands supply from TPC. The term "new connection/new consumers" have been clearly used in the context of the said judgment. If the existing statutory and regulatory regime and specific circumstances of

Mumbai are to be taken into consideration there can be no other meaning to the term new connection/new consumers other than the one put forward by RInfra.

33. With reference to paragraph 8 of the said submissions, the said paragraph merely reproduces the provisions of the Act.

34. With reference to paragraph 9 of the said submissions, the same is contrary to all the other submissions of TPC as well as the said judgment. TPC now claims to be entitled to supply in the entire area on its own network to all consumers be they existing or new and in that process TPC seeks to twist the meaning of new consumers to include those who have disconnected from RInfra. If this interpretation of TPC is to be accepted, it is but right that TPC is compelled to lay its network in the entire area and simultaneously is compelled to hand over RInfra's network back to RInfra immediately. What TPC wants to achieve is to lay its network as it chooses when it choose to whom it choose and thereby progressively render RInfra's network redundant – a result which is frowned upon by the Hon`ble Tribunal in the said judgment. The contents of paragraph 9 are denied.

35. With reference to paragraph 10 of the said submissions, the contents thereof are out of context quotations from various provisions and TPC's interpretation and the contents of paragraph 10 as made are denied.

36. Referring to paragraphs 11 to 13 of the said submissions, the interpretation put to new connection/new consumers by Tata Power is denied. The submissions made in the paragraph under reference are repetitive and have already been replied to hereinabove. RInfra denies the contents thereof.

37. Referring to paragraph 14 of the said submissions, it is denied that the term new connection/new consumers as used in the said judgment have to be interpreted in the manner canvassed by TPC. It is denied that there is no restriction imposed on any distribution licensee from laying network as alleged or at all or that TPC has taken the same into account in its rollout plan. It is denied that the network rollout plan would have to be approved.

Response to Presentation of TPC dated 12-08-2015.

38. RInfra proceeds to reply to individual slides of the presentation in respect of RInfra area of supply, made by the Petitioner during the hearing held on 12-08-2015.

39. It is submitted that presentation made by TPC was primarily based on additional submissions filed on 06-08-2015. RInfra has filed its detailed submissions on 11-08-2015 in response to TPC's additional submissions. RInfra repeats and reiterates the contents of its submissions dated 11-08-2015 and are not repeated for the sake of brevity.

40. With reference to slide 6 and slide 16, it is submitted that the network roll out principles considered by TPC proceed on completely erroneous and misleading footing, inter alia, that new as well as existing RInfra consumers are free to opt for any of the distribution licensee's network, which defeats the very basis, object and purport of the judgment dated 28-11-2014 in Appeal No 246 of 2012 ("the said judgment") by apparently seeking to restart the entire matter of cherry picking and selective network laying, only this time under the garb of "consumer choice of network". TPC is, purportedly on an apparent incorrect interpretation to suit itself, seeking to give the said judgment a go by thereby nullifying the same. The purported contentions of TPC run counter to its own earlier stand with regard to duplication of network and constraints in laying the same in its area of supply. However, purported roll out plan submitted by TPC also does not address the core issue of constraints faced by TPC in erecting substations etc. In this regard, the following is submitted:

41. The said judgment lays down the following principles for network development in the common area of supply of RInfra and TPC:

i) Where a reliable distribution of RInfra already exists it would be in the overall interest of consumers of TPC and RInfra that the change over consumers must continue to get supply from TPC on RInfra's network with liberty to change over back to RInfra in case RInfra's tariff becomes attractive – this being so as duplication of network particularly on account of physical constraints and high costs would not be in the overall interest of the consumers (Thus switch over of any

consumer using RInfra's network is barred by the said judgment);

ii) No undue commercial advantage should be gained by TPC by selectively laying down network to cater to only high end consumers and any cherry picking by TPC should be avoided;

iii) TATA POWER SHOULD BE RESTRICTED TO LAYING DOWN ITS NETWORK ONLY IN AREAS (A) WHERE LAYING DOWN OF PARALLEL NETWORK WOULD IMPROVE THE RELIABILITY OF SUPPLY AND BENEFIT THE CONSUMERS AND (B) EXTEND SUPPLY TO NEW CONSUMERS WHO SEEK CONNECTION FROM TATA POWER;

iv) Only in areas where TPC has made considerable investment in constructing the distribution system in pursuance to the directions of this Hon`ble Commission and if such distribution system is yet to be commissioned and capitalized then it should be allowed to be commission and capitalize such assets to feed the consumers as decided by the Commission

42. It can be seen from the Slide 6 that TPC's interpretation of new load/connection is the one also including Redevelopment of existing areas. This interpretation of TPC runs contrary to the stated principles of the said judgment viz. avoidance of high cost when an existing reliable network is already present in the area concerned and that for such areas, the consumers should get supply from TPC using the existing network of RInfra. It is submitted that TPC has conveniently interpreted "Redevelopment" as "new connection" and proceeded on the footing that for new connections it is free to lay network and provide supply. However, as said above, Redevelopment cannot be termed as new connection as in case of redevelopment, there already exists a network supplying to the existing load. While Redevelopment would result in creation of additional load, the same can be served most efficiently and with least economic implication, through augmentation of such existing network itself, instead of creation of parallel network, involving high cost, which is exactly what is sought to be prevented by the said judgment. The report

attached as Annexure 2 to RInfra submissions dated 12-08-2015 shows a general illustration as to how the existing meshed 11kV network of RInfra in a given area ensures that the cost of serving incremental load and incremental load as a result of redevelopment for RInfra would be much lower as compared to TPC which would not have its existing network and would be required to lay down the same.

43. Another consideration for network development as listed out by TPC is "consumer demand and network development in consumer interest". This interpretation of TPC is not found anywhere in the said judgment. The said judgment seeks to protect the interests of all consumers and this is precisely why it lays down specific principles for network development. Else, if "consumer demand" was the principle as TPC has purportedly put across, all network in the common area would be developed simply on consumer demand and no principle would be required at all. It is submitted that the "consumer interest" that TPC is referring to will be served best only when network duplication is prevented. Consumer interest means the interest of all consumers put together – both of RInfra and of TPC and such interest will be harmed irreparably if fixed costs of the network are allowed to be doubled. In this regard, paras 74 to 76 of the said judgment are quoted below, which clearly specify how "consumer interest" is to be interpreted in the context of network development in the common license area:

"74. The Act has mandated the State Commission to protect the interests of the consumers. The State Commission, while giving any direction to the licensee is bound to ensure that such direction is in the interests of the consumer. Tata Power has expressed difficulties in laying down parallel network in the common licence area with RInfra. ***Laying of parallel network in every nook and corner of the city irrespective of the requirement and cost and where a reliable distribution system of RInfra is already existing would not be in the interest of the consumers of both Tata Power and RInfra as the existing network can be used for changeover.*** *Wheeling charges of the Tata Power would increase due to un-necessary CAPEX and wheeling charges of RInfra would also increase due depletion of the consumer base. In changeover, RInfra recovers wheeling charges from changed over*

consumers and its consumer base, for evaluating wheeling charges, would remain intact.

75. ***In this regard we are of the view that the approach adopted by the State Commission in case number 113 of 2008 dated 15.6.2009, ruling that incurring heavy capital expenditure for the network roll-out is not the only option available to Tata Power in its efforts to supply electricity to different consumers in its licence area, and the provisions of the EA 2003 relating to Open Access and the provisions of the MERC (General Conditions of Distribution Licence) Regulations, 2006 relating to use of the distribution network of another distribution licensee, need to be explored by Tata Power, so that the cost is optimised, was the correct approach.***

76. The Commission should have continued to follow the same approach in its subsequent orders too. We have already given directions in regard to laying down of network by Tata Power in the preceding paragraphs while deciding the second issue." (Emphasis Supplied)

In accordance with the above, it is clear that the directions given in the said judgment regarding development of network by TPC should be implemented with cost optimisation as the ultimate and sole objective. The judgment clearly specifies that consumer interest will be protected by maximum utilisation of RInfra's network, so that capex can be optimised by taking full advantage of economies of scale offered by RInfra's network and its spread.

44. Regarding "increasing reliability of supply" to existing consumers, the plan submitted by TPC nowhere demonstrates as to how Reliability of supply as provided by RInfra network is factored in the plan and what measure of reliability has been considered and, in areas where TPC purportedly claims poor reliability, what is the cost of reliability improvement that has been considered in the plan. It is submitted that reliability of supply to consumers of RInfra is ensured through overall planning of network to ensure N-1 redundancies so that in case of tripping, most consumers can be served through alternate feeding, thereby ensuring lower minutes "off supply". Further, network augmentation and up-

gradation to ensure even further improvement in reliability is a continuous feature of RInfra's capex plans and for which RInfra is only required to undertake incremental capex. Therefore, in order to evaluate the rollout plan in the context of improvement in reliability, the Hon'ble Commission has to (a) arrive at an objective measure of reliability from the point of view of consumer, (b) determine what can be defined as "poor" reliability and (c) most importantly, considering the cost of improvement in reliability of both licensees to arrive at a decision which avoids high cost incidence on all consumers.

45. It is submitted that in order to meet the principles of economics of network development as laid down by the Hon'ble Tribunal, any conditions for network development imposed by the Hon'ble Commission as part of the present proceedings would not be in consonance with the present License issued to TPC and hence would require the Commission to specify the Specific Conditions not only for TPC but also for RInfra, so that the two Licensees are able to ensure most optimal network expansion and modernisation in a coordinated manner. The purported interpretation given by TPC is, as stated above, incorrect thereby giving a complete go by to the said judgment and also seeking permission of this Hon`ble Commission to lay network wherever it chooses.

46. With reference to slide 7, it is submitted that the network rollout plan given along with the additional submissions dated 06-08-2015 as well as in the Petition contains several discrepancies which are highlighted in RInfra submissions dated 11-08-2015 (Para 11.3 to 11.10). This slide 7 only lays out how changes in the network roll-out plan have been made by TPC between October 2014 and Feb 2015 based on its interpretation of the said judgment. However, as explained in the above mentioned paragraphs, there are considerable discrepancies in such interpretation of TPC. Accordingly, such rollout plan, inter alia, on the said basis is clearly required to be rejected.

47. With reference to slide 10 and 11, in respect of Table giving details of existing network, RInfra submits the following:

47.1. TPC has laid negligible network in BEST's area of supply as compared to that of RInfra, wherein it had option to use the existing network of RInfra. For example, the LT cable length in BEST area is only 26 km, whereas in RInfra area it is 1113 KM and same applies to other network parameters also. This clearly shows that TPC is concentrating on duplicating the network in the area where it can be avoided by utilising RInfra's existing, reliable network and is not proposing to lay network as much as is required in BEST area, where it has no option of utilising BEST's network and is therefore obligated to serve consumers using its own network only.

47.2. The loading percentage of the existing network of TPC and TPC's proposal to enhance the loading of CSS to 50% (as per TPC's Additional Submissions dated 06-08-2015) is completely outside the scope of the present proceedings. These proceedings are confined to approval of TPC's network roll-out plan in accordance with the observations and principles enunciated by the said judgment. In fact, TPC's suggestion appears to be to load its existing network to 50% by making the existing network of RInfra supplying to such consumers, redundant. RInfra submits that this is in complete contravention to the said judgment which has held that consumers who are presently connected to and served by RInfra should be supplied by TPC on changeover only.

47.3. The said judgment only allows TPC to commission and capitalise assets which are under construction and where significant investment is made (i.e. there is significant level of CWIP). However, TPC has enlarged the scope of this finding to include even those assets which are already capitalised by TPC, but are not loaded optimally, as claimed by TPC. It is submitted that since such assets are already commissioned and capitalised, they will form part of TPC's ARR. As far as loading is concerned, no new DSS or CSS commences with optimal loading from day one and loading gradually increases over time as more new connections are extended and there is growth in specific consumption of already connected consumers. It is submitted that the said judgment does not delve into these issues at all and only provides for capitalisation of those assets where capital is already committed by TPC based on Commission's directions in Case No. 151 of 2011, and significant CWIP exists. It is submitted

that any additional approval by this Hon'ble Commission fro increasing the loading of TPC's existing network would be in violation of the directions of the said judgment.

In view of what is stated hereinabove:

47.4. It is submitted that loading of existing network of TPC in BEST area is 28%, which clearly reflects that historically TPC network is loaded to such an extent and now TPC, by conveniently interpreting the said judgment to increase the loading of its existing network, by seeking to switchover existing RInfra consumers thereby making RInfra network redundant.

48. With reference to slides 13 to 29, RInfra has, for the sake of brevity, divided its submissions based on the three types of areas identified by TPC in its petition, rather than commenting on each slide separately. The submissions are as follows:

Yellow Field Areas:

48.1. As submitted by TPC, these are areas with limited potential for growth and TPC, in its petition, has only proposed little capex for last mile connectivity in H West Ward. However, it is not clear as to how TPC proposes to migrate a load of 102 MW (as per Slides 27 and 28) from existing consumers of RInfra across all wards, while only proposing minimal capex for last mile roll-out in H West Ward. This seems to indicate that under the garb of approval of Network Roll-out, TPC plans to switchover existing RInfra consumers, already being served through a reliable network of RInfra. RInfra submits that as per the judgment of the Hon'ble Tribunal, load migration through switchover is generally prohibited and is only permitted as an exception in case of those consumers as decided by the Hon'ble Commission, in order for TPC to commission and capitalise its works, wherever significant capital investment is already made.

Brown Field Areas:

48.2. In respect of brown field areas, at the outset it is submitted that TPC has apparently based its assessment on "*MCGM's proposed Development Plan 2013 – 2034)"*. It is submitted that it is public

knowledge that the proposed development plan as published by the Government of Maharashtra has several discrepancies, does not reflect the correct position and thus is under rectification after verifying the real position. It is thus not clear as to how the same has been considered by TPC as the basis of "*Brown field areas"*. The projections are thus clearly incorrect and consequently the rollout plan based on such incorrect projections which in turn are based on incorrect DP (and undergoing major rectification and change at present) is required to be rejected.

48.3. TPC has considered load growth of almost 446 MW to propose network rollout i.e. TPC is proposing to duplicate the network to the extent of 35% of RInfra's existing load (for total RInfra load – for brown field areas only, the percentage would be even higher). As mentioned above, it is submitted that in case of redeveloped premises, RInfra's network is already existing and providing supply to the existing buildings/structures. If TPC is allowed to supply to such redeveloped premises, it would amount to duplication of network by TPC. It is submitted that even if any augmentation needs to be done to cater to redeveloped premises, RInfra's cost would be only a small fraction of the cost which TPC will have to incur, as already stated above. A sample computation of the same is annexed and marked as Annexure "2" of RInfra submissions dated 11-08-2015.

48.4. TPC has, neither in its petition, nor in its presentation, indicated the capital investment in Rs. Cr. that it proposes to incur in Brown Field Areas in order to meet the load that TPC has projected to be catered through its network. This is important statistics to evaluate the aspect of cost efficiency of duplication of network vis-a-vis what would be the capex if existing network of RInfra were to be upgraded / reconfigured to cater to additional load of redevelopment.

Green Field Areas:

48.5. In respect of green field areas, it is submitted that any network rollout plan to be approved for green field areas needs to be considered in light of existing network availability of RInfra or TPC and only that licensee should be allowed to lay network

whose marginal cost is lower to lay network to such new consumer.

49. With specific reference to Slide 14 (read with slide 29), it is submitted that the said “Principle 3” of TPC relates only to para 59 of the said judgment, which allows TPC to commission and capitalise its works where significant capital investment is made pursuant to the Commission’s earlier directions and, even in case of such assets, the Commission is required to decide as to which consumers should be allowed to be fed from such assets. Therefore, in its network rollout plan, TPC is expected to specifically point out the assets which are already in construction and where significant investment has been made, in which areas/wards such assets exist and which consumers or type of consumers such assets propose to serve. Only such load, if at all any, needs to be considered by TPC in its Roll-out Plan. Even in that case, the Hon’ble Commission will decide the consumers / load that should be allowed to be fed from such assets. Instead, TPC has proposed to generalise this exception of the said judgment and is seeking to transfer existing consumers of RInfra on those assets which are already commissioned and put to use.

50. With specific reference to Slide 15, it is submitted as follows:

50.1. RInfra has been a power distribution utility of the suburban Mumbai since more than 8 decades and has developed reliable network in every nook and corner of its supply area. It has a total of 77 nos. of 33(22)/11kV substations within its licensed supply area with total installed capacity of 3297 MVA fed through a network of nearly 880kms of 33(22)kV underground cable network spread across the supply area. The peak arithmetic demand as seen by the 33(22) kV network during May 2015 was 1996 MVA & coincident demand 1825 MVA; thus having an optimal installed capacity to demand ratio of 1.6. The total installed distribution transformer capacity as on May-June 2015 was about 4606 MVA in more than 6700 nos. of distribution substations (i.e nearly 17 nos. of substations/sq.kms and nearly 12 MVA of installed capacity/sq. km). A meshed open-ring 11kV cable network, totalling to about 3200kms of circuit length, feeds the distribution substations. At the LT level, the total LT mains network length is about 5900 kms reaching each and every

domestic consumer; irrespective of whether the consumer is from densely populated slum area such as Shivaji nagar or premium residences in Khar, Juhu, Bandra areas, or remotely located fishermen colonies in Uttan area. Geographical Map giving details of RInfra network details marked as Annexure “1” are already submitted along with RInfra submissions dated 11-08-2015.

50.2. The overall reliability of RInfra’s network (considering the network spread) is among the best in the nation with availability of 99.99% achieved in view of interconnected mesh network at various voltage level and through deployment of state-of-the-art systems like SCADA (Supervisory Control And Data Acquisition), DMS (Distribution Management System), Integrated GIS (Geographical Information System) and OMS (Outage Management System) which support the physical network and are unparalleled in the country. The unique 11kV and LT Mesh network is far more effective than the traditionally used ‘ring’ network, to ensure that electricity is restored during a power outage, with the least delay or in-convenience to the customers. The overall network planning philosophy of RInfra is the key element in ensuring unmatched reliability that the system provides to its connected consumers, across the entire license area. The detailed report of RInfra network reliability and expansion philosophy, measures to further improve reliability, cost effectiveness of RInfra network for new/redeveloped loads etc marked as Annexure “2” is already submitted along with RInfra submissions dated 11-08-2015.

50.3. In view of its extensive reliable network in the entire area of supply which is common to TPC, any laying of network by TPC would not only result in incurrence of significantly high fixed cost to lay such network, but would also not be justified in view of its marginal utility, since the reliability and quality of supply rendered by existing RInfra’s network is anyway superior and further improvements thereon can be executed by RInfra at little incremental capex on its existing network as against TPC which would have to lay the entire network. RInfra in its report on network reliability and expansion philosophy of RInfra annexed as Annexure-2 to the RInfra submissions dated 11-08-2015 has explained overall network planning process of RInfra and how the same ensures that RInfra’s cost of extending supply to consumers

and its cost of improvement in reliability will only be incremental and hence minimal, as against cost of creation of network from scratch, which would put the burden of cost doubling on all consumers in the area of supply.

50.4. It is submitted that while TPC claims to have considered in the Roll-out plan, the reliability of its change-over consumers based on its own data, there is actually no demonstration of the same in the Rollout Plan. The Rollout plan does not provide any data that TPC has purportedly considered, nor does it demonstrate as to how such data has been used to propose network development in order to purportedly improve reliability. Further, the rollout plan does not provide any cost implication of such purported improvement of reliability, which, in RInfra's submission is of paramount importance as quality and reliability are never viewed in isolation of their cost implication on the consumers.

50.5. It is submitted that TPC intends to switchover and duplicate network for almost 548 MW (out of a total of 605 MW) contrary to the principles and directions of the said judgment, which specifies that even the changeover consumers (consumers receiving supply on RInfra network) will continue to remain connected to RInfra network even if TPC network is available in vicinity. Relevant extract of the said judgment are reproduced below:

*"80(ii) .....**Therefore, it is in the interest of consumers of Tata Power and RInfra that the changeover consumers of Tata Power continue to get supply from Tata Power on the RInfra, even if a 33/22 kV sub-station of Tata Power is available in the vicinity**. It will also be convenient and economical for the consumer to changeover back to RInfra in case RInfra's tariff becomes more attractive in future."* (Emphasis Supplied)

51. With reference to Slides 30 to 40, it is submitted that the same relate to the rollout plan for Mumbai City, which plan in RInfra's opinion, is required to be completely revised in view of Hon'ble Commission's opinion during the hearing held on August 12, 2015, that TPC is required to be prepare its rollout plan considering the entire existing and proposed load in BEST area.

52. With reference to slide 41, it is submitted that TPC has reassessed ward-wise load projection figures and has revised current load projection to 744 MW. However, despite the load projection having been reduced from 1065 MW (as per Roll Out plan submitted in February 2015) to 744 MW, out of which 605 MW is in RInfra's area, TPC has maintained the same capital expenditure of Rs.1380 Crore , which is the same Table as Table 13 in the Petition in Case No. 182 of 2014 filed in February 2015. Thus, it appears that TPC is merely giving an impression that in view of the order of this Hon`ble Commission it is giving an update to reflect the new statistics but nonetheless is keeping the expenditure the same, even after projecting a lower load. Thus clearly the purported revised rollout plan is fraught with data errors and is merely an eye wash and is required to be rejected.

53. With reference to slide 42, it is submitted that TPC has laid network after the ATE judgment dated 28-11-2014 contrary to the directions given in the said judgment, wherein TPC was specifically restrained from laying any network till approval of roll out plan. Relevant extract of the ATE judgment is as reproduced below:

"58 .....The Rollout Plan shall be approved by the State Commission only after hearing RInfra and the consumers. ***In the meantime, Tata Power should be restrained to lay down distribution network in the distribution area common to RInfra****.*

61. In view of above, Tata Power is directed to submit its Roll Out Plan as indicated above for approval of the State Commission. In the meantime, ***Tata Power is restrained to lay down its distribution network in the area common to RInfra till further orders of the State Commission on its Rollout Plan as per the directions given in this judgment****. ....."* (Emphasis Supplied)

54. With reference to slide 44 and 45, it is submitted that and as is clear from the daily order dated 06-08- 2014, in respect of the proceedings undertaken by this Hon`ble Commission on 30-07-2015, TPC was required to furnish the following information:

"*i. Detailed geographical plan indicating existing and proposed network.*

ii. Explain how its proposed network rollout plan satisfies the various principles provided in paragraph 58 to 61 of ATE judgment and previous orders of this Commission.

iii. Provide distinction, wherever necessary, for the area served by RInfra and area served by BEST.

iv. Reconcile the figures provided in year wise network rollout and year wise capex phasing.

v. Clarify load projection of 1385 MW, potential load of 1065 MW and load booked of 744 MW considered in network rollout plan. Also separate out the details for RInfra and BEST's area of supply in this respect.

vi. Update the Petition to reflect the new statistics.

vii. Make necessary modifications in the Petition to address the concerns raised by the Commission in its Order dated 14 August, 2014 in Case No. 90 of 2014 as well as issue addressed in ATE judgment.

viii. Submit its response on the preliminary submissions filed by RInfra.".

Out of the above 8 items, the most material items are Item Nos.i, ii, vii and viii.

54.1. In respect of Item i, relating to the detailed geographical plan it is not possible to respond to the issues in respect thereof as the so called plans are incomplete and lack particulars. The copies submitted along with the additional submissions are unreadable and indecipherable. Thus, in effect, TPC has not complied with Item i.

54.2. In respect of Item ii, TPC has not explained how the proposed network rollout plan satisfies the various principles provided in paragraphs 56 to 61 of the said judgment and previous orders of this Hon`ble Commission. For instance, while in its petition TPC has proposed paralleling of network by proposing to migrate existing load of RInfra to its network and also by proposing to develop parallel network in respect of re-development load, it has not set out how the existing network of RInfra is not reliable when the reliability data is already in public domain and is uploaded on the website of RInfra every month, particularly when there is a

specific finding in the ATE judgment in paragraph 56: "*therefore, in the circumstances of the present case where a reliable distribution system of RInfra is already existing and physical constraints in laying down of network by Tata Power and very high cost involved in the same, it is in the overall interest of consumers of Tata Power and RInfra that the changeover consumers continue to get supply from Tata Power on the RInfra's network.*". Thus, there is a positive finding that there exists a reliable network of RInfra. TPC would be entitled to lay its network only if it is able to satisfy about the alleged unreliability of RInfra's existing network. Additionally, in paragraph 58 it is specifically found: "*laying down of parallel network in a congested metropolitan city like Mumbai where a reliable distribution network is already existing is to be viewed differently from situation in other areas in the country.....*". (underlining supplied)

54.3. Even in respect of new consumers TPC cannot lay down its network indiscriminately. To the extent possible TPC would be compelled to use the existing network of RInfra, as observed by the Hon`ble Tribunal.

54.4. In respect of the requirements to make modifications in TPC's Petition to address the concerns raised by the Hon`ble Commission in the Order dated 14-08-2014, as well as issues addressed in the said judgment, TPC has not addressed the said issues at all.

54.5. TPC has not submitted its response to the preliminary submissions filed by RInfra.

55. With reference to slide 46, it is submitted that that the Network roll out plan of TPC in respect of RInfra area of supply should be rejected and TPC should be directed to file revised roll out plan by considering the existing reliable network of RInfra and principles enunciated by Hon'ble Tribunal in the said judgment.

Annexure-1

Conclusion

52. For the above reasons, we find no merit in Civil Appeal No. 7128 of 2001 filed by All-India Federation of Tax Practitioners and others. We hold that Parliament has legislative competence to levy service tax by way of the impugned Finance Act, 1994 and Finance (No. 2) Act, 1998 under Entry 97 of List I on chartered accountants, cost accountants and architects. We further hold that the above position now stands fortified by the Constitution (Eighty-eighth Amendment) Act, 2003 which has inserted Article 268-A and Entry 92-C which clearly indicates that Entry 60 of List II and Entry 92-C of List I operate in different spheres. However, we make it clear that before us there is no challenge to the constitutional validity of the said Constitution (Eighty-eighth Amendment) Act, 2003.

53. Accordingly, the civil appeal is dismissed with no order as to costs.

(2007) 7 Supreme Court Cases 555

(BEFORE B.N. AGRAWAL, P.K. BALASUBRAMANYAN AND P.P. NAOLEKAR, JJ.)

Civil Appeal No. 3703 of 2003†

GIRNAR TRADERS . . Appellant;

Versus

STATE OF MAHARASHTRA AND OTHERS . . Respondents.

With

Civil Appeal No. 3922 of 2007‡

S.P. BUILDING CORPORATION AND ANOTHER . . Appellants;

Versus

STATE OF MAHARASHTRA AND OTHERS . . Respondents.

Civil Appeals No. 3703 of 2003 with No. 3922 of 2007, decided on August 27, 2007

A. **Land Acquisition and Requisition — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) — Ss. 127, 125 and 126 — Lapsing of reservation — Ten years' inaction by authorities after reservation of the land — Service of purchase notice by owner under S. 127 — Requisite steps to be taken by authorities within six months thereafter to prevent lapsing of reservation — What constitute — Nature, applicability of, and rationale behind S. 127, explained — Provisions intended to balance eminent domain power of State — Necessity of strict compliance with, emphasised**

— Held (*per majority*), the steps to be taken for acquisition of land as provided under S. 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

† From the Final Judgment and Order dated 18-3-2005 of the High Court of Judicature at Bombay in Writ Petition No. 353 of 2005

‡ Arising out of SLP (C) No. 11446 of 2005

reservation and inaction on the part of the State to acquire it — Making of an application by the municipal authorities under S. 126(1)(c) to State Govt. for acquisition of the land is not such a requisite step — If held otherwise then the authority will simply move such an application, and if no S. 6 notification is issued under S. 126(2) by State Govt. for one year from the date of reservation, then it will have to wait for the notification to be issued by State Govt. suo motu under S. 126(4): and till then there could be no lapse of reservation under S. 127 — Where the plain literal interpretation were to manifestly result in absurdity or 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 produce a rational result — Hardship, inconvenience, friction, uncertainty or confusion should be avoided — Hence, the requisite step should be a step of acquisition *of* land and not a step *for* acquisition of land — The requisite steps towards commencement of the acquisition in such a situation would not include a step which may not result in actual commencement of acquisition and is taken merely for the purpose of seeking time so that S. 127 does not come into operation, to defeat the purpose and object of the scheme of acquisition under the MRTP Act

— A step of acquisition of the land would be issuance of the S. 6, Land Acquisition Act, 1894 declaration under S. 126(2) by State Govt. — An application under S. 126(1)(c) could be a requisite step only if such application is moved within one year from the date of publication of the regional plan, and not otherwise

— The underlying principle envisaged in S. 127 is to utilise the land for the purpose it is reserved for in a given time or to let the owner utilise it for permissible uses — Providing the period of six months after service of purchase notice by the owner clearly indicates the legislative intention of an urgency where nothing has been done in regard to land reserved for a period of ten years and the owner is deprived of the utilisation of his land — When mandate is given in a section requiring compliance within a particular period, strict compliance is required therewith as introduction of S. 127 is with legislative intent to balance the eminent domain power of State — The acquisition cannot be left for time immemorial in the hands of the authority concerned — The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation — Compensation provided to the owner is the release of the land for keeping it under reservation for ten years without taking any steps for acquisition of the same

— In present case, since no steps had been taken by the authorities for acquisition of the land within six months of the notice, there is deemed dereservation of the land and appellant owners are permitted to utilise the same as is permissible

— *Per Balasubramanyan, J.* (dissenting), the court can only postulate the question whether the authority under the MRTP Act has done what it possibly could in terms of the statute — While reading S. 127, it has to be noted that when a purchase notice is received by the authority under MRTP Act, all it can do is to make an application for acquisition to the State Govt. and nothing more — If Govt. for administrative reasons or otherwise takes

time to initiate the proceeding and six months expire in between, it cannot be postulated that the reservation has lapsed — Otherwise, it would be compelling the authority to do something it has no power to do — MRTP Act serves a great social purpose and approach of court to an interpretation must be to see to it that the social purpose is not defeated as far as possible — Constitution of India — Art. 300-A — Interpretation of Statutes — Basic rules — Literal construction — Abandonment of literal construction — When warranted (*per majority*) — Land Acquisition Act, 1894 — S. 11-A — Lapse of acquisition — Inaction by State for long period (10 years) — Necessity of strict compliance with provisions providing for — Eminent domain

[**Ed.**: One only wonders, with the learned majority, why the authorities and State Govt. should not be required to act with urgency within the six months after notice, not having bothered to take any action for ten years prior to that?]

B. **Land Acquisition and Requisition — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) — S. 127 — Commencement of period of six months under — When occurs — Held (*per majority*), the same occurs from the date the owner or any person interested in the land serves a notice on the authority concerned expressing his intent claiming dereservation of the land**

C. **Land Acquisition and Requisition — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) — S. 127 — Effect of lapsing of reservation under — Held (*per curiam*), in such a case the land shall be released from reservation, allotment or designation and shall be available to the owner for the purpose of development permissible as per the plan**

D. **Land Acquisition and Requisition — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) — Ss. 125 and 126 — Scheme and steps to be taken for acquisition of land under, explained — Corresponding provisions in Land Acquisition Act, 1894, pointed out — Held (*per majority*), acquisition under the MRTP Act commences with the publication of the S. 6, Land Acquisition Act, 1894 declaration under S. 126(2) or (4) by the State Government, and not prior to that**

E. **Land Acquisition and Requisition — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) — S. 126 — Power to issue declaration under S. 126(4) after period of one year has expired from reservation of the land — Authority in whom inheres — Held (*per curiam*), it is only the State Govt. that can act under S. 126(4), and that too of its own motion**

F. **Land Acquisition and Requisition — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) — S. 126 — Making of valid application under S. 126(1)(c) — Requirements for — Held (*per majority*), such an application can be valid only if it is backed by a resolution or authority of the Municipal Corporation — A resolution of the Improvement Committee of the Municipal Corporation would not be enough, unless authorised therefor by the Municipal Corporation**

G. **Land Acquisition and Requisition — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) — Ss. 126 and 2(15) & (19) — Making**

of valid application under S. 126(1)(c) — Person competent for — Held (*per majority*), has to be a person duly authorised by the Municipal Corporation

Per majority *(Agrawal and Naolekar, JJ.)*

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 the lawgiver 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 are at variance with, or not required by, the scope and object of the legislation, it would be necessary to examine further and to test, by certain settled rules of interpretation, what was the real and true intention of the legislature and thereafter apply the words if they are capable of being so applied so as to give effect to that intention. Where the plain literal interpretation of statutory provision were to manifestly result in injustice never intended by the legislature, the court is entitled to modify the language used by the legislature so as to achieve the intention of the legislature and to produce a rational construction. (Para 38)

Where the legislature has used words in an Act which if generally construed, must lead to palpable injustice and consequences revolting to the mind of any reasonable man, the court will always endeavour to place on such words a reasonable limitation, on the ground that the legislature could not have intended such consequence to ensue, unless the express language in the Act or binding authority prevents such limitation being interpolated into the Act. In construing an Act a construction ought not be put that would work injustice, or even hardship or inconvenience, unless it is clear that such was the intention of the legislature. Where the language of the legislature admits of two constructions and if construction in one way would lead to obvious injustice, the courts act upon the view that such a result could not have been intended, unless the intention had been manifested in express words. Out of the two interpretations, that language of the statute should be preferred to that interpretation which would frustrate it. It is a cardinal rule governing the interpretation of the statutes that when the language of the legislature admits of two constructions, the court should not adopt the construction which would lead to an absurdity or obvious injustice. (Para 39)

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 in the working of the system. 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. 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.

(Paras 39 and 43)

Collector of Customs v. *Digvijaysinhji Spg. & Wvg. Mills Ltd.*, AIR 1961 SC 1549 : (1962) 1 SCR 896; *Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225 : AIR 1973 SC 1461; *Narashimaha Murthy* v. *Susheelabai*, (1996) 3 SCC 644; *American Home Products Corpn.* v. *Mac Laboratories (P) Ltd.*, (1986) 1 SCC 465 : AIR 1986 SC 137; *Tirath Singh* v. *Bachittar Singh*, AIR 1955 SC 830; *CIT* v. *J.H. Gotla*, (1985) 4 SCC 343 : 1985 SCC

(Tax) 670 : AIR 1985 SC 1698; *State of Rajasthan* v. *Leela Jain*, AIR 1965 SC 1296, *relied on*

State v. *Sat Ram Dass*, AIR 1959 Punj 497; *Andhra Cotton Mills Ltd.* v. *Lakshmi Ganesh Cotton Ginning Mill*, (1996) 1 An LT 537 (AP), *approved*

The Maharashtra Regional and Town Planning Act, 1966 ("the MRTP Act") does not contain any reference to Section 4 or Section 5-A of the Land Acquisition Act, 1894 ("the LA Act"). 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 5-A of the LA Act. Sections 4 and 5-A of the LA Act are purposely excluded for the purposes of acquisition under the MRTP Act. (Para 58)

On a conjoint reading of Sections 126(1), (2) and (4), it is evident that Section 126 provides for different steps which are to be taken by the authorities for acquisition of the land in different eventualities and within a particular time span. Steps taken for acquisition of the land by the authorities under Section 126(1)(*c*) have to be culminated into the Section 6 declaration under the LA Act for acquisition of the land in the Official Gazette, within a period of one year under Section 126(2) proviso. If no such declaration is made within the time prescribed, no declaration under Section 6 of the LA Act could be issued under Section 126(2) proviso 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. Thus, during one year of the publication of the draft regional plan, two steps need to be completed, namely, (*i*) application by the appropriate authority to the State Government under Section 126(1)(*c*); and (*ii*) declaration by the State Government on receipt of the application mentioned in Section 126(1)(*c*) on satisfaction of the conditions specified under Section 126(2). The only exception to this provision has been given under Section 126(4). (Paras 60 and 61)

The acquisition commences with the publication of declaration under Section 6 of the LA Act. The publication of the declaration under Sections 126(2) and (4) of the MRTP Act 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 the Section 6 declaration which would commence the acquisition proceedings under the MRTP Act and would culminate into passing of an award as provided in Section 126(3) of the MRTP Act. Thus, unless and until Section 6 declaration is issued, it cannot be said that the steps for acquisition are commenced. (Para 58)

Section 127 of the MRTP Act is a special and unique provision and would be attracted in the peculiar facts and circumstances mentioned in the section itself. It does not have any universal application and, therefore, the applicability thereof would depend on the facts of each case. Section 127 cannot be understood without reference to Section 126 which has an important bearing while interpreting the words used in Section 127, namely, "the land is not acquired or no steps as aforesaid are commenced for its acquisition". 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. (Paras 24, 4 and 5)

On conjointly reading 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. 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. (Paras 31 and 54)

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 period of six months the land has to be acquired or the steps as aforesaid are to be commenced for its acquisition. 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. 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. 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. 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. (Paras 31, 54 and 56)

The legislature while enacting Section 127 has deliberately used the word "steps" (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act. Section 126(1)(*c*) 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. Section 126(2) 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. (Paras 57 and 59)

Section 126(2) provides for one year's limitation for publication of the declaration from the date of publication of the draft plan or scheme. Hence, 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 Section 126(2) of the MRTP Act,

there being a prohibition under Section 126(2) proviso to issue such declaration after one year. Therefore, by no stretch of imagination, could the step taken by the Municipal Corporation under Section 126(1)(*c*) of making an application be said to be a step for the commencement of acquisition of the land.

(Para 62)

It is true that Section 126(4) 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 without any steps taken by the planning authority i.e. Bombay Municipal Corporation. However, Section 126(4) is a provision whereunder only the State Government is authorised and empowered to issue fresh declaration for acquiring the land under the LA Act. (Paras 28, 29 and 62)

The six-month period under the second part of Section 127 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 dereservation 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. (Para 31)

If no proceedings as provided for under Section 127 are taken and as a result thereof the reservation of the land lapses, the land shall be released from reservation, allotment or designation and shall be available to the owner for the purpose of development. The availability of the land to the owner for the development would only be for the purpose which is permissible in the case of adjacent land under the relevant plan. Thus, even after the release, the owner cannot utilise the land in whatever manner he deems fit and proper, but its utilisation has to be in conformity with the relevant plan for which the adjacent lands are permitted to be utilised. (Para 32)

If the acquisition is left for time immemorial in the hands of the authority concerned 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 under Section 126(2) read with Section 6 of the LA Act for one year of the publication of the draft regional plan, wait for the notification to be issued by the State Government by exercising suo motu power under Section 126(4); 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 landowner for his utilisation as permitted under Section 127. (Para 54)

The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let the owner utilise the land for the purpose it is permissible under the town planning scheme. Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation of his land as per the user permissible under the plan. When mandate is given in a section requiring compliance within a particular period, strict compliance is required therewith as introduction of this section is with legislative intent to balance the power of the State of "eminent domain". The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged

to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same. (Paras 56 and 55)

Municipal Corpn. of Greater Bombay v. *Dr. Hakimwadi Tenants' Assn.*, 1988 Supp SCC 55 *clarified* and *distinguished*

In the present case the revised development plan was sanctioned on 16-9-1991 and 10 years had expired on 15-9-2001 without there being any acquisition or steps being taken for acquisition of the land in question. The purchase notice under Section 127 was given by the appellant owners on 15-3-2002 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 had to be commenced by 18-9-2002. (Paras 33 and 34)

On 9-9-2002, the Improvement Committee passed Resolution No. 183 recommending the Municipal Corporation to initiate the acquisition proceedings. On 13-9-2002 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. For the first time on 16-9-2002, a resolution was passed by the Municipal Corporation whereby sanction was given to initiate the acquisition proceedings of land and the Municipal Commissioner was authorised to make an application to the State Government and on 17-9-2002 a letter was sent by the Chief Engineer (Development Plan) to the Government of Maharashtra for initiating acquisition proceedings. As held above, the sending of this application under Section 126(1)(*c*) did not constitute the requisite "steps" for acquisition contemplated by Section 127. (Paras 13, 14, 34 and 35)

Further, 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. 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. (Para 63)

Lastly, under Section 2(19) read with Section 2(15) with Section 126(1) of the MRTP Act, the application to the State Government under Section 126(1)(*c*) 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. On a minute and careful scrutiny of the documents on record it is found that the application under Section 126(1)(*c*) was not moved by the officer authorised by the Municipal Corporation, but rather by the Chief Engineer (Development Plan). (Paras 65 and 66)

As no steps have been taken by the Municipal Corporation for acquisition of the land within the time period, there is deemed dereservation of the land in question and the appellants are permitted to utilise the land as permissible under Section 127 of the MRTP Act. (Para 68)

Per Balasubramanyan, J. *(dissenting)*

I find myself unable to agree with the view taken by the learned majority on the interpretation of Section 127 of the MRTP Act. (Para 116)

The LA 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. The MRTP Act provides for lapsing of reservations under Section 127 but does not provide for lapsing of the acquisition. If the reservation lapses, the landowner could use the land for the purposes for which the adjacent lands are permitted to be used under the development plan or revised plan. On the other hand, notwithstanding the default to act in terms of Section 126(2), the acquisition can be proceeded with by issuing a fresh declaration and the compensation has to be determined with reference to the date of that fresh declaration. (Paras 94, 96 and 89 to 91)

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, it has to be noted that the authority under the MRTP Act can only make an application for acquisition under the LA 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, it has to be seen what the authority under the MRTP Act has done. The first part of the provision abovequoted is unambiguous and that is a case where the land is actually acquired. The second limb shows that it is possible to avert the lapse of the scheme if steps as aforesaid are commenced for its acquisition. (Para 118)

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 LA Act. After all, the legislature has given the authority a locus poenitentiae for invoking the machinery for acquisition under the LA 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. 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 six months expire in between, it cannot be postulated that the reservation has lapsed. Otherwise it would amount to compelling the authority under the MRTP Act to do something that it has no power to do. 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 Chief Engineer as authorised by the local authority and to say that the letter written by him is unauthorised or is not adequate compliance with Section 127 of the MRTP Act appears to be unwarranted especially when the laudable objects of the MRTP Act are kept in mind. 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. (Paras 119 to 122)

Thus, in the present case there has been sufficient compliance with the requirements of Section 127 of the MRTP Act by the authority under the Act by the acquisition initiated against the appellant and the reservation in respect of the land involved therein does not lapse by the operation of Section 127 of the Act. (Para 123)

Municipal Corpn. of Greater Bombay v. *Dr. Hakimwadi Tenants' Assn.*, 1988 Supp SCC 55, *referred to*

H. **Land Acquisition and Requisition — Land Acquisition Act, 1894 — S. 11-A — Applicability through State Town Planning Acts, particularly Maharashtra Regional and Town Planning Act, 1966, incorporating various provisions of the 1894 Act, but prior to insertion of S. 11-A — Effect given to amendments made to S. 23, the 1894 Act in respect of the State Acts to save State Acts from vice of hostile discrimination, though said amendments also made post incorporation of provisions of the 1894 Act — Effect of — Matter referred to Constitution Bench — Various questions formulated for consideration of Constitution Bench (*per curiam*) — Observed (*per Agrawal and Naolekar, JJ.*), there is no justifiable reason for distinguishing between the principle applied for making S. 23 (as amended) applicable through the State Acts and for making S. 11-A so applicable — In fact, the principle applies a fortiori since S. 11-A provides a superior right than the right of enhanced compensation that had been made available by the amendments in question to S. 23(37 of 1966) — Statute Law — Legislation by incorporation — Applicability of amendments made to incorporated statute to incorporating statute subsequent to the incorporation — Effect of, incorporating statute being State Act and incorporated statute being Central Act — Matter referred to Constitution Bench — Constitution of India — Art. 141 — Reference to Constitution Bench — When warranted**

I. **Land Acquisition Act, 1894 — Ss. 11-A and 23 — Nature of rights made available under — Held (*per Agrawal and Naolekar, JJ.*), S. 11-A is not a mere procedural provision — In fact, the right to retain the land on lapse of the acquisition under S. 11-A is a right superior to the right to get compensation for acquisition of the land under S. 23 — Jurisprudence — Conceptual jurisprudence — Procedural and substantive provisions of law — Attributes of, explained — Practice and Procedure — Civil Procedure Code, 1908 — Property Law — Constitution of India — Art. 300-A**

Per curiam

Per Agrawal and Naolekar, JJ.

The question regarding interpretation and applicability of Section 11-A introduced into the LA Act by Amendment Act 68 of 1984 to the MRTP Act is referred for consideration by a larger Bench. (Para 1)

Though it has been held by the Supreme Court that an amendment brought about subsequently in the LA Act would not apply to the State statutes that incorporated provisions of the LA Act, beneficial amendment of payment of compensation under the amended provisions of the LA Act was made applicable to the State statutes and the owner of the land was held to be entitled to the beneficial payment of compensation so as 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 timely acquisition of land as provided for under Section 11-A of the LA Act. Under Section 11-A, 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. (Para 2)

It cannot be accepted that Section 11-A of the LA Act is a procedural provision and does not stand on the same footing as Section 23 of the LA Act. Procedure is a mode in which the successive steps in litigation are taken. Section 11-A 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 it is a substantive right which accrues to the owner of the land, and that in view thereof Section 11-A 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. (Para 3)

Nagpur Improvement Trust v. *Vasantrao*, (2002) 7 SCC 657; *U.P. Avas Evam Vikas Parishad* v. *Jainul Islam*, (1998) 2 SCC 467, *relied on*

State of Maharashtra v. *Sant Joginder Singh Kishan Singh*, 1995 Supp (2) SCC 475 : (1995) 2 SCR 242, *disapproved*

Per Balasubramanyan, J.

On the one hand it has been held that amendments brought about in the LA Act, subsequent to the incorporation thereof by the State Act, could not apply to acquisitions under the State Act yet it has been held that the compensation payable has to be calculated in terms of the LA Act as amended by Act 68 of 1984. This conclusion has been based not on a theory of legislation by reference but based on the need to prevent discrimination. (Paras 105 to 107)

There are at least two three-Judge Bench decisions which have recognised principles which may have to be considered or reconsidered while considering the aspects posed by the order of reference which has placed this matter before this Bench. In that context, 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. (Para 110)

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. The propositions enunciated in *State of M.P.* v. *M.V. Narasimhan*, (1975) 2 SCC 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. (Para 111)

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 in a case of legislation by incorporation, 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 112)

These aspects require consideration by a Constitution Bench considering that it also involves an interpretation of the Constitution and the constitutional scheme of legislation. 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. (Paras 113 and 111)

Nagpur Improvement Trust v. *Vasantrao*, (2002) 7 SCC 657; *U.P. Avas Evam Vikas Parishad* v. *Jainul Islam*, (1998) 2 SCC 467; *Nagpur Improvement Trust* v. *Vithal Rao*, (1973) 1 SCC 500; *State of Kerala* v. *T.M. Peter*, (1980) 3 SCC 554, *relied on*

Girnar Traders v. *State of Maharashtra*, (2004) 8 SCC 505; *State of Maharashtra* v. *Sant Joginder Singh Kishan Singh*, 1995 Supp (2) SCC 475 : (1995) 2 SCR 242; *Secy. of State for India in Council* v. *Hindusthan Coop. Insurance Societies Ltd.*, (1930-31) 58 IA 259 : AIR 1931 PC 149; *Rangoon Botatoung Co. Ltd.* v. *Collector, Rangoon*, (1911-12) 39 IA 197; *Chairman of Municipal Commrs. of Howrah* v. *Shalimar Wood Products (P) Ltd.*, AIR 1962 SC 1691 : (1963) 1 SCR 47; *Ujagar Prints (II)* v. *Union of India*, (1989) 3 SCC 488 : 1989 SCC (Tax) 469, *referred to*

Ex parte St. Sepulchres, (1863) 33 LJ Ch 372; *London, Chatham and Dover Rly. Co.* v. *Wandsworth Board of Works*, (1873) LR 8 CP 185; *Bolani Ores Ltd.* v. *State of Orissa*, (1974) 2 SCC 777; *Mahindra & Mahindra Ltd.* v. *Union of India*, (1979) 2 SCC 529; *Bajaya* v. *Gopikabai*, (1978) 2 SCC 542; *Collector of Customs* v. *Nathella Sampathu Chetty*, AIR 1962 SC 316 : (1962) 3 SCR 786; *New Central Jute Mills Co. Ltd.* v. *Asstt. CCE*, (1970) 2 SCC 820; *Special Land Acquisition Officer, City Improvement Trust Board* v. *P. Govindan*, (1976) 4 SCC 697; *State of M.P.* v. *M.V. Narasimhan*, (1975) 2 SCC 377 : 1975 SCC (Cri) 589, *cited*

Craies on Statute Law, 7th Edn., p. 223, *referred to*

J. **Land Acquisition and Requisition — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966) — S. 126 — Public purposes for which land may be acquired under, *per Balasubramanyan, J.*, are restricted to those in respect of plans under the town planning scheme and not for acquisition of lands for other purposes or for public purpose as envisaged by the Land Acquisition Act, 1894 (Para 71)**

K. **Precedents — Obiter dicta — Precedential value of — Reiterated, do not have binding effect (Para 53)**

ADM, Jabalpur v. *Shivakant Shukla*, (1976) 2 SCC 521; *Union of India* v. *Dhanwanti Devi*, (1996) 6 SCC 44; *Director of Settlements, A.P.* v. *M.R. Apparao*, (2002) 4 SCC 638; *Shin-Etsu Chemical Co. Ltd.* v. *Aksh Optifibre Ltd.*, (2005) 7 SCC 234; *Mittal Engg. Works (P) Ltd.* v. *CCE*, (1997) 1 SCC 203; *Jagdish Lal* v. *State of Haryana*, (1997) 6 SCC 538 : 1997 SCC (L&S) 1550; *Divisional Controller, KSRTC* v. *Mahadeva Shetty*, (2003) 7 SCC 197 : 2003 SCC (Cri) 1722, *relied on*

Quinn v. *Leathem*, 1901 AC 495 : (1900-03) All ER Rep 1 (HL); *State of Orissa* v. *Sudhansu Sekhar Misra*, AIR 1968 SC 647 : (1968) 2 SCR 154, *cited*

Advocates who appeared in this case :

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

Chronological list of cases cited ***on page(s)***

1. (2005) 7 SCC 234, *Shin-Etsu Chemical Co. Ltd.* v. *Aksh Optifibre Ltd.* 584*a*
2. (2004) 8 SCC 505, *Girnar Traders* v. *State of Maharashtra* 590*f-g*
3. (2003) 7 SCC 197 : 2003 SCC (Cri) 1722, *Divisional Controller, KSRTC* v. *Mahadeva Shetty* 584*b-c*
4. (2002) 7 SCC 657, *Nagpur Improvement Trust* v. *Vasantrao* 568*f*, 602*b-c*, 602*e-f*
5. (2002) 4 SCC 638, *Director of Settlements, A.P.* v. *M.R. Apparao* 583*f*
6. (1998) 2 SCC 467, *U.P. Avas Evam Vikas Parishad* v. *Jainul Islam* 568*f*, 601*d-e*, 601*e-f*, 602*e*
7. (1997) 6 SCC 538 : 1997 SCC (L&S) 1550, *Jagdish Lal* v. *State of Haryana* 584*b*
8. (1997) 1 SCC 203, *Mittal Engg. Works (P) Ltd.* v. *CCE* 584*b*
9. (1996) 6 SCC 44, *Union of India* v. *Dhanwanti Devi* 582*f*
10. (1996) 3 SCC 644, *Narashimaha Murthy* v. *Susheelabai* 580*f*
11. (1996) 1 An LT 537 (AP), *Andhra Cotton Mills Ltd.* v. *Lakshmi Ganesh Cotton Ginning Mill* 581*c-d*
12. 1995 Supp (2) SCC 475 : (1995) 2 SCR 242, *State of Maharashtra* v. *Sant Joginder Singh Kishan Singh* 569*a-b*, 572*g*, 573*a*, 591*a*, 593*e-f*, 594*d*, 604*f*, 604*g-h*, 605*a*, 605*a-b*
13. (1989) 3 SCC 488 : 1989 SCC (Tax) 469, *Ujagar Prints (II)* v. *Union of India* 600*g*
14. 1988 Supp SCC 55, *Municipal Corpn. of Greater Bombay* v. *Dr. Hakimwadi Tenants' Assn.* 579*c*, 581*e*, 584*b-c*, 584*c*, 585*b*, 585*f*, 585*f-g*, 586*d*, 594*e*, 606*f*, 608*b*
15. (1986) 1 SCC 465 : AIR 1986 SC 137, *American Home Products Corpn.* v. *Mac Laboratories (P) Ltd.* 580*f-g*
16. (1985) 4 SCC 343 : 1985 SCC (Tax) 670 : AIR 1985 SC 1698, *CIT* v. *J.H. Gotla* 581*c*
17. (1980) 3 SCC 554, *State of Kerala* v. *T.M. Peter* 603*f*
18. (1979) 2 SCC 529, *Mahindra & Mahindra Ltd.* v. *Union of India* 601*b*
19. (1978) 2 SCC 542, *Bajaya* v. *Gopikabai* 601*b-c*
20. (1976) 4 SCC 697, *Special Land Acquisition Officer, City Improvement Trust Board* v. *P. Govindan* 601*d*
21. (1976) 2 SCC 521, *ADM, Jabalpur* v. *Shivakant Shukla* 582*b-c*
22. (1975) 2 SCC 377 : 1975 SCC (Cri) 589, *State of M.P.* v. *M.V. Narasimhan* 602*a*, 605*d-e*
23. (1974) 2 SCC 777, *Bolani Ores Ltd.* v. *State of Orissa* 601*b*
24. (1973) 4 SCC 225 : AIR 1973 SC 1461, *Kesavananda Bharati* v. *State of Kerala* 580*e*
25. (1973) 1 SCC 500, *Nagpur Improvement Trust* v. *Vithal Rao* 602*f*
26. (1970) 2 SCC 820, *New Central Jute Mills Co. Ltd.* v. *Asstt. CCE* 601*d*

27. AIR 1968 SC 647 : (1968) 2 SCR 154, *State of Orissa* v. *Sudhansu Sekhar Misra* 582*c-d*
28. AIR 1965 SC 1296, *State of Rajasthan* v. *Leela Jain* 581*c-d*
29. AIR 1962 SC 1691 : (1963) 1 SCR 47, *Chairman of Municipal Commrs. of Howrah* v. *Shalimar Wood Products (P) Ltd.* 600*g*
30. AIR 1962 SC 316 : (1962) 3 SCR 786, *Collector of Customs* v. *Nathella Sampathu Chetty* 601*d*
31. AIR 1961 SC 1549 : (1962) 1 SCR 896, *Collector of Customs* v. *Digvijaysinhji Spg. & Wvg. Mills Ltd.* 580*e*
32. AIR 1959 Punj 497, *State* v. *Sat Ram Dass* 581*a*
33. AIR 1955 SC 830, *Tirath Singh* v. *Bachittar Singh* 581*b*
34. (1930-31) 58 IA 259 : AIR 1931 PC 149, *Secy. of State for India in Council* v. *Hindusthan Coop. Insurance Societies Ltd.* 599*a*, 599*d-e*, 601*b*, 601*e*
35. (1911-12) 39 IA 197, *Rangoon Botatoung Co. Ltd.* v. *Collector, Rangoon* 599*b*
36. 1901 AC 495 : (1900-03) All ER Rep 1 (HL), *Quinn* v. *Leathem* 582*b-c*
37. (1873) LR 8 CP 185, *London, Chatham and Dover Rly. Co.* v. *Wandsworth Board of Works* 600*e*
38. (1863) 33 LJ Ch 372, *Ex parte St. Sepulchres* 600*d-e*

The Judgments† of the Court were delivered by

P.P. NAOLEKAR, J. (*majority view: for B.N. Agrawal, J. and himself*)— 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 *Girnar Traders* v. *State of Maharashtra* wherein the learned Brother has taken into consideration various decisions of this Court, including decisions delivered by three-Judge Benches, and various aspects considered therein, and thought it proper to refer the question regarding interpretation and applicability of Section 11-A 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.

2. A three-Judge Bench of this Court in *Nagpur Improvement Trust* v. *Vasantrao*[1] and *U.P. Avas Evam Vikas Parishad* v. *Jainul Islam*[2] 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

† **Ed.**: Balasubramanyan, J. delivered a partially dissentient opinion.

1 (2002) 7 SCC 657

2 (1998) 2 SCC 467

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.

3. A two-Judge Bench of this Court in *State of Maharashtra* v. *Sant Joginder Singh Kishan Singh*[3] has held that Section 11-A 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 11-A 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 11-A 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 and 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.

4. 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 landowner to get his land dereserved 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.

5. 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.

6. SLP (C) No. 11446 of 2005 titled *S.P. Building Corpn.* v. *State of Maharashtra* is required to be decided by this Bench only and, therefore, we propose to decide it as follows.

3 1995 Supp (2) SCC 475 : (1995) 2 SCR 242

7. Leave granted.

8. The brief facts necessary for deciding the questions raised in this appeal are that Appellant 1 is a partnership firm registered under the 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 yd situated at Carmichael Road, Malabar Hill Division, Mumbai 400 026.

9. On 7-7-1958, Bombay Municipal Corporation had issued a declaration under Section 4(1) of the Bombay Town Planning Act, 1954 (hereinafter referred to as "the Act of 1954"), expressing its intention to prepare a development plan for the area under its jurisdiction and published a development plan in accordance with the provisions of the said Act on 9-1-1964. The plan was submitted by the Corporation to the Government of Maharashtra for sanction on 8-7-1964 and on 6-1-1967 the Government of Maharashtra accorded sanction to the development plan which pertained to 'D' Ward of the Corporation area and the plan came into force on 7-2-1967. The land of the appellant was notified for development as "open space and children's park". On 11-1-1967, the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the MRTP Act") repealed the Act of 1954 saving the proceedings already initiated under the Act of 1954.

10. Proceedings were taken up for acquisition of the land. Since no award was made, as per Section 11-A of the Land Acquisition (Amendment) Act, 1984 which came into force on 24-9-1984, the acquisition proceedings were declared by the Land Acquisition Officer to have lapsed. Later on, a revised development plan sanctioned by the State Government on 6-7-1991 came into effect on 16-9-1991.

11. On 3-2-1998 the appellants served notice through their advocates under Section 127 of the MRTP Act asking for renotifying the property or to release the said property from reservation and accord sanction/approval to develop the property by the owner. In reply, the Municipal Corporation, Greater Mumbai informed the appellants that purchase notice issued by their advocates was invalid as ten years had not expired since the sanction of the revised development plan came into force on 16-9-1991. On 18-10-2000, the appellants again served purchase notice under Section 127 of the MRTP Act. Again the Municipal Corporation of Greater Mumbai informed the appellants that the notice was invalid as the period of ten years had not lapsed from the date of the revised plan.

12. On 15-3-2002, the appellants addressed yet another notice to the Municipal Corporation, Greater Mumbai under Section 127 of the MRTP Act stating therein that ten years' period had lapsed on 16-9-2001 and since no proceedings for acquisition of the land as contemplated under Section 127(1) of the MRTP Act or under the Land Acquisition Act, 1894 (hereinafter referred to as "the LA Act") having been commenced nor has any award been made or compensation paid, the property should be dereserved. The purchase notice was served on the Municipal Commissioner, Greater Mumbai on 19-3-2002.

13. 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 1), the Improvement Committee passed Resolution 183 recommending the Municipal Corporation to initiate the acquisition proceedings under the provisions of Sections 126(2) and (4) of the MRTP Act read with Section 6 of the LA Act, as amended up to 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.

14. On 13-9-2002 (Document 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 up to date read with Section 6 of the LA Act. Thereafter, on 16-9-2002 (Document 3), the Corporation passed Resolution 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 Sections 126(2) and (4) of the MRTP Act read with Section 6 of the LA Act, as amended up to date; and/or, initiate proceedings under Sections 90(1) and (3) of the Bombay Municipal Corporation Act, 1888 as amended up to date, for the land being purchased by the Commissioner on behalf of the Corporation.

15. After the resolution was passed, on 17-9-2002 (Document 4) a letter was written by the Chief Engineer (Development Plan) to the Secretary, Urban Development Department, Government of Maharashtra informing that the Corporation had accorded sanction to initiate acquisition proceedings and for the said purpose authorised 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 up to 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 400 032
>
> *Sub.*: Acquisition of land bearing CS No. 18/738 of Malabar Hill division reserved for children park.
>
> *Ref.*: (*i*) TPB-4302/572/UD-11 dt. 27-3-2002
>
> (*ii*) CHE/ACQ/C/962 dt. 13-9-2002

Sir,

With reference to above, it is to be mentioned here that Corporation by their Resolution 956 of 16-9-2002 (copy enclosed) have accorded sanction to initiate the acquisition proceedings for the abovementioned land reserved for children's park adm. approximately 4504.52 sq m and also authorised the Municipal Commissioner to make application to the State Government as per provision of Section 126(1) of the MRTP Act, 1966 as amended up to date to issue order for the acquisition of property under reference as provided under the provisions of Sections 126(2), (3) and (4) of the MRTP Act, 1966 as amended up to date read with Section 6 of LA Act, 1894. The application to the State Government along with the required information in the usual pro forma in triplicate and three copies of plans have already been submitted vide this office letter issued under No. CHE/ACQ/C/962 dt. 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.

16. Being 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 (*S.P. Building Corpn.* v. *State of Maharashtra*) 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 11-A of the LA Act, the award having not been admittedly made within two years from the date of publication of the declaration.

17. 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 *State of Maharashtra* v. *Sant Joginder Singh Kishan Singh*[3] has held that Section 11-A of the LA Act as amended is not applicable to the proceedings for acquisition initiated under the MRTP Act and dismissed the writ petition.

18. The appellants filed this appeal by way of SLP (C) No. 11446 of 2005 challenging the order of the Division Bench of the Bombay High Court.

3 1995 Supp (2) SCC 475 : (1995) 2 SCR 242

This Court by an order dated 11-7-2005 issued notice and tagged the case along with CA No. 3703 of 2003 wherein a two-Judge Bench of this Court had doubted the correctness of the decision rendered by this Court in *Sant Joginder Singh case*[3] on which the Bombay High Court has relied, in regard to the applicability of the newly inserted provision of Section 11-A of the LA Act, to the acquisition under Chapter VII of the MRTP Act. Thus, the matter has been heard along with CA No. 3703 of 2003 wherein the only question raised is in regard to the applicability of the new provision of Section 11-A 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 dereservation of the land reserved under a development plan.

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

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

21. Chapter VII of the MRTP Act deals with land acquisition. Sections 125 to 129 fall in Chapter VII. Section 125 provides that any land required, reserved or designated in a regional plan, development plan or town planning scheme for a public purpose or purposes including plans for any area of comprehensive development or for any new town shall be deemed to be land needed for a public purpose within the meaning of the LA Act. Section 126 provides three modes of acquisition of the land included in the town planning scheme for the public purpose.

22. Section 127 provides for lapsing of reservation if the land reserved, allotted or designated is not acquired by agreement within 10 years from the date on which a final regional plan or final development plan comes into force or if proceedings for acquisition of land under the MRTP Act or under the LA Act are not commenced within such period, then the owner or any person interested in the land may serve a notice. If within six months from the date of service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed and the land shall be deemed to be released from such reservation.

23. Section 128(1) confers the power on the State Government to acquire the land needed for a public purpose different from any public purpose under the scheme or purpose of the planning authority or development authority or

3 *State of Maharashtra* v. *Sant Joginder Singh Kishan Singh*, 1995 Supp (2) SCC 475 : (1995) 2 SCR 242

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.

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

> "126. *Acquisition of land required for public purposes specified in plans.*—(1) When after the publication of a draft regional plan, a development or any other plan or town planning scheme, any land is required or reserved for any of the public purposes specified in any plan or scheme under this Act at any time the planning authority, development authority, or as the case may be, any appropriate authority may, except as otherwise provided in Section 113-A, acquire the land,—
>
> (*a*) by agreement by paying an amount agreed to, or
>
> (*b*) in lieu of any such amount, by granting the landowner or the lessee, subject, however, to the lessee paying the lessor or depositing with the planning authority, development authority or appropriate authority, as the case may be, for payment to the lessor, an amount equivalent to the value of the lessor's interest to be determined by any of the said authorities concerned on the basis of the principles laid down in the Land Acquisition Act, 1894, floor space index (FSI) or transferable development rights (TDR) against the area of land surrendered free of cost and free from all encumbrances, and also further additional floor space index or transferable development rights against the development or construction of the amenity on the surrendered land at his cost, as the Final Development Control Regulations prepared in this behalf provide, or
>
> (*c*) by making an application to the State Government for acquiring such land under the Land Acquisition Act, 1894,
>
> and the land (together with the amenity, if any, so developed or constructed) so acquired by agreement or by grant of floor space index or additional floor space index or transferable development rights under this section or under the Land Acquisition Act, 1894, as the case may be, shall vest absolutely free from all encumbrances in the planning authority, development authority, or as the case may be, any appropriate authority.
>
> (2) On receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose therein specified, or if the State Government (except in cases falling under Section 49 and except as provided in Section 113-A) itself is of opinion that any land included in any such plan is needed for any public purpose, it may make a declaration to that effect in the Official Gazette, in the manner provided in Section 6 of the Land Acquisition Act, 1894, in respect of the

said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section:

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 of publication of the draft town planning scheme:

Provided that, nothing in this sub-section shall affect the date for the purpose of determining the market value of land in respect of which proceedings for acquisition commenced before the commencement of the Maharashtra 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."

25. 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 landowner 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.

26. 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.

27. Sub-section (3) postulates that on publication of a declaration in the Official Gazette under Section 6 of the LA Act, the Collector shall proceed to take orders for the acquisition of the land under the LA Act and the provisions of that Act shall apply to the acquisition of the said land with certain modifications as provided in Clauses (*i*), (*ii*) and (*iii*) of sub-section (3) for determination of the market value on the basis of different dates. Sub-section (3) makes it abundantly clear that after publication of the declaration in the Official Gazette under Section 6 of the LA Act, the entire procedure which shall be followed will be as provided under the LA Act, that is to say, from Section 8 onwards up to Section 28 of the LA Act which deal with acquisition of land under the LA Act.

28. 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 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).

29. Sub-section (4) of Section 126 authorises the State Government to make a declaration for acquisition of the land under Section 6 of the LA Act without any steps taken by the planning authority i.e. Bombay Municipal Corporation. Under sub-section (4) of Section 126, the State Government can make a fresh declaration if the declaration under sub-section (2) of Section 126 was not made within the time stipulated for acquisition of the land, if it is satisfied that the land is required for a public purpose, subject to the modification that the market value of the land shall be the market value at the date on which the declaration in the Official Gazette is made for acquisition of the land afresh. Sub-section (4) is the provision whereunder only the State Government is authorised and empowered to issue fresh declaration for acquiring the land under the LA Act.

30. 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 utilisation of the land for the purpose for which it is included in the plan has to take steps and do things within the period stipulated in a particular span of time, the land having been reserved curtailing the right of the owner or its user. Section 127 reads as under:

> "127. *Lapsing of reservations.*—If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final regional plan, or final development plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the planning authority, development authority or as the case may be, appropriate authority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan."

31. 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 dereservation 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.

32. If no proceedings as provided under Section 127 are taken and as a result thereof the reservation of the land lapses, the land shall be released

from reservation, allotment or designation and shall be available to the owner for the purpose of development. The availability of the land to the owner for the development would only be for the purpose which is permissible in the case of adjacent land under the relevant plan. Thus, even after the release, the owner cannot utilise the land in whatever manner he deems fit and proper, but its utilisation has to be in conformity with the relevant plan for which the adjacent lands are permitted to be utilised.

33. It is an admitted position that on 16-9-1991 the revised development plan was sanctioned and 10 years have expired on 15-9-2001 without there being any acquisition or steps being taken for acquisition of the land in question. On 15-3-2002, the purchase notice under Section 127 was given by the appellants which was received by the authorities on 19-3-2002. Under the second part of Section 127, the land was either required to be acquired or steps in that regard have to be commenced by 18-9-2002. For the first time after the service of purchase notice, on 9-9-2002 a proposal was made by the Improvement Committee recommending the Municipal Corporation for sanction to initiate the acquisition proceedings.

34. On 13-9-2002 without there being any resolution by the Municipal Corporation, the Chief Engineer (Development Plan) sent an application to the State Government for initiating the acquisition proceedings. For the first time on 16-9-2002, a resolution was passed by the Municipal Corporation whereby sanction was given to initiate the acquisition proceedings of land and the Municipal Commissioner was authorised to make an application to the State Government and on 17-9-2002 a letter was sent by the Chief Engineer (Development Plan) to the Secretary, Urban Development Department, Government of Maharashtra for initiating acquisition proceedings. Admittedly, in the present case, the land was neither acquired nor were the steps taken within 10 years from the date on which the final regional plan or final development plan came into force.

35. Shri Shekhar Naphade, Senior Advocate appearing for the State and Shri Bhim Rao Naik, Senior Advocate appearing for the Municipal Corporation contended that the steps were taken on 17-9-2002 when in pursuance of the resolution passed by the Municipal Corporation of Greater Mumbai, the Chief Engineer (Development Plan) sent a letter to the State of Maharashtra enclosing therewith a copy of Resolution 956 dated 16-9-2002, requesting that the steps be taken for acquisition of the land and this step taken by the respondents would constitute "steps" for the acquisition of the land under Clause (*c*) of Section 126(1) of the MRTP Act, the same having been taken on 17-9-2002 when the period of six months had not expired, the same to be expired on 18-9-2002 and, therefore, the provision of dereservation under Section 127 would not apply.

36. It is contended by Shri Soli J. Sorabjee and Shri U.U. Lalit, learned Senior Counsel appearing for the appellants, that the intent and purpose of Section 127 of the MRTP Act is the acquisition of land within six months or the steps are taken for acquisition of the land within six months, which could

only be when a declaration under Section 6 of the LA Act is published in the Official Gazette. It is submitted by the learned Senior Counsel that the words "if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition" are not susceptible of a literal construction and the words have to be given a meaning which safeguards a citizen against arbitrary and irrational executive action which, in fact, may not result in acquisition of the land for a long period to come. It cannot be doubted that the period of 10 years is a long period where the land of the owner is kept in reservation. Section 127 gives an opportunity to the owner for dereservation 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 dereservation after the period of 10 years has expired.

37. While interpreting the purpose of Section 127, this Court in *Municipal Corpn. of Greater Bombay* v. *Dr. Hakimwadi Tenants' Assn.*[4] has said: (SCC p. 63, para 11)

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

The Court also said: (SCC p. 61, para 8)

> "*8.* While the contention of learned counsel appearing for the appellant that the words 'six months from the date of service of such notice' in Section 127 of the Act were not susceptible of a literal construction, must be accepted, it must be borne in mind that the period of six months provided by Section 127 upon the expiry of which the reservation of the land under a development plan lapses, is a valuable safeguard to the citizen against arbitrary and irrational executive action. Section 127 of the Act is a fetter upon the power of eminent domain."

38. 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 lawgiver as collected from the statute itself and the nature of subject-matter and the mischiefs to be remedied. If the plain words lead apparently to do some injustice or absurdity and at variance with, or not required by, the scope and object of the legislation, it would be necessary to examine further and to test, by certain settled rules of interpretation, what was the real and true intention of the legislature and thereafter apply the words if they are capable of being so applied so as to give effect to that intention. Where the plain literal interpretation of statutory provision were to

4 1988 Supp SCC 55

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.

39. Where the legislature has used words in an Act which if generally construed, must lead to palpable injustice and consequences revolting to the mind of any reasonable man, the court will always endeavour to place on such words a reasonable limitation, on the ground that the legislature could not have intended such consequence to ensue, unless the express language in the Act or binding authority prevents such limitation being interpolated into the Act. In construing an Act, a construction ought not be put that would work injustice, or even hardship or inconvenience, unless it is clear that such was the intention of the legislature. It is also settled that where the language of the legislature admits of two constructions and if construction in one way would lead to obvious injustice, the courts act upon the view that such a result could not have been intended, unless the intention had been manifested in express words. Out of the two interpretations, that language of the statute should be preferred to that interpretation which would frustrate it. It is a cardinal rule governing the interpretation of the statutes that when the language of the legislature admits of two constructions, the court should not adopt the construction which would lead to an absurdity or obvious injustice. It is equally well settled that within two constructions that alternative is to be chosen which would be consistent with the smooth working of the system which the statute purported to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion in the working of the system. (See *Collector of Customs* v. *Digvijaysinhji Spg. & Wvg. Mills Ltd.*[5], at p. 899 and *Kesavananda Bharati* v. *State of Kerala*[6].) 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.

40. In a series of judgments of this Court, these exceptional situations have been provided for. In *Narashimaha Murthy* v. *Susheelabai*[7], it was held that: (SCC p. 658, para 20)

> "[T]he purpose of law is to prevent brooding sense of injustice. It is not the words of the law but the spirit and internal sense of it that makes the law meaningful."

41. In *American Home Products Corpn.* v. *Mac Laboratories (P) Ltd.*[8] (at AIR p. 166, para 66), it was held that: (SCC p. 508, para 66)

> "It is a well-known principle of interpretation of statutes that a construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly."

5 AIR 1961 SC 1549 : (1962) 1 SCR 896
6 (1973) 4 SCC 225 : AIR 1973 SC 1461
7 (1996) 3 SCC 644
8 (1986) 1 SCC 465 : AIR 1986 SC 137

42. Further, in *State* v. *Sat Ram Dass*[9] the Punjab High Court held that: (AIR p. 498, para 4)

> "To avoid absurdity or incongruity even grammatical and ordinary sense of the words can in certain circumstances be avoided;"

43. Many a times, it becomes necessary to look into the true intention of the legislature in order to give a proper effect to the statutory provisions and in order to achieve the actual intended goal behind the legislation. In *Tirath Singh* v. *Bachittar Singh*[10] it was held by the Court that: (AIR p. 833, para 7)

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

The same has been upheld by the Supreme Court in *CIT* v. *J.H. Gotla*[11] and in *Andhra Cotton Mills Ltd.* v. *Lakshmi Ganesh Cotton Ginning Mill*[12]. Similarly, in *State of Rajasthan* v. *Leela Jain*[13] it was held that: (AIR p. 1299, para 11)

> "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…."

44. Learned Senior Counsel appearing on both sides have strongly relied on the decision of this Court in *Municipal Corpn. of Greater Bombay* v. *Dr. Hakimwadi Tenants' Assn.*[4] It is contended by the learned Senior Counsel for the appellants that the decision squarely covers the proposition of law wherein it has been held that the development or the planning authority must take recourse to acquisition with some amount of promptitude in order that the compensation paid to the expropriated owner bears a just relation to the real value of the land; and that the period of six months provided by Section 127 upon the expiry of which the reservation of the land under a development plan lapses, is a valuable safeguard to the citizens against the arbitrary and irrational executive action. Section 127 of the Act is a fetter upon the power of eminent domain. On the other hand, the learned Senior Counsel for the State submits that if we read para 11 of the above judgment, it is clearly held that the steps for commencement of the acquisition obviously refer to the steps contemplated by Section 126(1) which means the steps taken for making an application under Clause (*c*) of Section 126(1) of the MRTP Act

9 AIR 1959 Punj 497
10 AIR 1955 SC 830
11 (1985) 4 SCC 343 : 1985 SCC (Tax) 670 : AIR 1985 SC 1698
12 (1996) 1 An LT 537 (AP)
13 AIR 1965 SC 1296
4 1988 Supp SCC 55

and has contended that this Court had already observed that after the service of notice from the owner or any person interested in the land as provided under Section 127 of the MRTP Act, the steps taken within six months of such service, included any step taken by the appropriate authority for the acquisition of land as contemplated under the provisions of Section 126(1) of the MRTP Act. It has been further contended that such observation of this Court is binding as precedent.

45. 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 *ADM, Jabalpur* v. *Shivakant Shukla*[14] has observed: (SCC pp. 668 & 714, paras 394 & 474)

> "*394.* … The Earl of Halsbury, L.C. said in *Quinn* v. *Leathem*[15] 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 *State of Orissa* v. *Sudhansu Sekhar Misra*[16] 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."

46. In *Union of India* v. *Dhanwanti Devi*[17] a three-Judge Bench of this Court has observed as follows: (SCC pp. 51-52, paras 9-10)

> "*9.* … It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's 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

14 (1976) 2 SCC 521
15 1901 AC 495 : (1900-03) All ER Rep 1 (HL)
16 AIR 1968 SC 647 : (1968) 2 SCR 154
17 (1996) 6 SCC 44

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

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

47. Similarly, in *Director of Settlements, A.P.* v. *M.R. Apparao*[18] a Bench comprising three Judges, has observed: (SCC p. 650, para 7)

"*7.* … But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or 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 before it but not arising in such manner as to require a decision."

18 (2002) 4 SCC 638

48. This Court in *Shin-Etsu Chemical Co. Ltd.* v. *Aksh Optifibre Ltd.*[19] has observed: (SCC p. 265, para 69)

> "*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*[20], at p. 207 (para 8); *Jagdish Lal* v. *State of Haryana*[21], at p. 560 (para 17); *Divisional Controller, KSRTC* v. *Mahadeva Shetty*[22], at p. 206 (para 23).]

49. We will now analyse that whether the observations of the Court in *Municipal Corpn. of Greater Bombay case*[4] as extracted from para 11 of that judgment constituted binding or authoritative precedent with respect to the question of law arising in the present case. In *Municipal Corpn. of Greater Bombay case*[4] 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.

50. 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.

51. The Corporation passed a Resolution dated 10-1-1978 for the acquisition of the land and made an application to the State Government which on being satisfied that the land was required for a public purpose issued the requisite Notification dated 7-4-1978 under Section 6 of the LA Act for acquisition of the land. A petition was filed before the High Court to quash the aforementioned notification, which was allowed by the Single

19 (2005) 7 SCC 234
20 (1997) 1 SCC 203
21 (1997) 6 SCC 538 : 1997 SCC (L&S) 1550
22 (2003) 7 SCC 197 : 2003 SCC (Cri) 1722

4 *Municipal Corpn. of Greater Bombay* v. *Dr. Hakimwadi Tenants' Assn.*, 1988 Supp SCC 55

Judge and subsequently maintained by the Division Bench. The contention of the appellant Corporation before this Court was that the period of six months after the notice by the owner or any person interested in the land as specified under Section 127, would start from date when such person had provided the requisite information to the Corporation.

52. In light of the abovementioned factual matrix, the question of law involved in *Municipal Corpn. of Greater Bombay case*[4] was as follows: (SCC pp. 57-58, para 2)

> "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 of the planning authority i.e. 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: (SCC p. 60, para 7)

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

Thus, after perusing the judgment in *Municipal Corpn. of Greater Bombay case*[4] we have found that the question for consideration before the Court in *Municipal Corpn. of Greater Bombay case*[4] 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.

53. The observations of this Court regarding the linking of word "*aforesaid*" from the wordings "*no steps as aforesaid are commenced for its*

4 *Municipal Corpn. of Greater Bombay* v. *Dr. Hakimwadi Tenants' Assn.*, 1988 Supp SCC 55

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.

54. 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 Corpn. of Greater Bombay case*[4]. If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation 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 landowner for dereservation. 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.

55. Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation 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

4 *Municipal Corpn. of Greater Bombay* v. *Dr. Hakimwadi Tenants' Assn.*, 1988 Supp SCC 55

therewith as introduction of this section is with legislative intent to balance the power of the State of "eminent domain". The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same.

56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let the owner utilise 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.

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

58. The MRTP Act does not contain any reference to Section 4 or Section 5-A 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 5-A 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.

59. 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.

60. On a conjoint reading of sub-sections (1), (2) and (4) of Section 126, we notice that Section 126 provides for different steps which are to be taken by the authorities for acquisition of the land in different eventualities and within a particular time span. Steps taken for acquisition of the land by the authorities under Clause (*c*) of Section 126(1) have to be culminated into Section 6 declaration under the LA Act for acquisition of the land in the Official Gazette, within a period of one year under the proviso to sub-section (2) of Section 126. If no such declaration is made within the time prescribed, no declaration under Section 6 of the LA Act could be issued under the proviso to sub-section (2) and no further steps for acquisition of the land could be taken in pursuance of the application moved to the State Government by the planning authority or other authority.

61. Proviso to sub-section (2) of Section 126 prohibits publication of the declaration after the expiry of one year from the date of publication of draft regional plan, development plan or any other plan or scheme. Thus, from the date of publication of the draft regional plan, within one year an application has to be moved under Clause (*c*) of Section 126(1) which should culminate into a declaration under Section 6 of the LA Act. As per the proviso to sub-section (2) of Section 126, the maximum period permitted between the publication of a draft regional plan and declaration by the Government in the Official Gazette under Section 126(2) is one year. In other words, during one year of the publication of the draft regional plan, two steps need to be completed, namely, (*i*) application by the appropriate authority to the State Government under Section 126(1)(*c*); and (*ii*) declaration by the State Government on receipt of the application mentioned in Clause (*c*) of Section 126(1) on satisfaction of the conditions specified under Section 126(2). The only exception to this provision has been given under Section 126(4).

62. 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 had to be made within the period of one year from

the date of the publication of regional plan, that is, within the period of one year from 1991. The application under Section 126(1)(*c*) could be said to be a step taken for acquisition of the land if such application is moved within the period of one year from the date of publication of regional plan. The application moved after the expiry of one year could not result in the publication of declaration in the manner provided under Section 6 of the LA Act, under sub-section (2) of Section 126 of the MRTP Act, there being a prohibition under the proviso to issue such declaration after one year. Therefore, by no stretch of imagination, could the step taken by the Municipal Corporation under Section 126(1)(*c*) of making an application be said to be a step for the commencement of acquisition of the land. After the expiry of one year, it is left to the Government concerned under sub-section (4) of Section 126 to issue declaration under Section 6 of the LA Act for the purposes of acquisition for which no application is required under Section 126(1)(*c*). Sub-section (4) of Section 126 of the MRTP Act would come into operation if the State Government is of the view that the land is required to be acquired for any public purpose.

63. 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.

64. 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 authorisation 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.

65. 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 was made to the State Government by the Chief Engineer (Development Plan). The authority was given by the Municipal Corporation to the Municipal Commissioner to make an application to the State Government. No such application or letter moved by the Municipal Commissioner has been produced before us. On being asked by this Court, as many as six documents have been produced before us by the counsel for the Municipal Corporation who has stated before us that these documents were also placed before the Division Bench of the Bombay High Court. Therefore, we have permitted production of these documents before us.

66. On a minute and careful scrutiny of the documents produced before us, we do not find that the application under Clause (*c*) of Section 126(1) was moved by the officer authorised 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.

67. 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 11-A 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.

68. 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 dereservation of the land in question and the appellants are permitted to utilise the land as permissible under Section 127 of the MRTP Act.

P.K. BALASUBRAMANYAN, J. (*partly dissentient view*)— Leave granted in Special Leave Petition (Civil) No. 11446 of 2005.

70. 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*[23]. 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 Civil Appeal No. 3703 of 2003. 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 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 Act. According to the

23 (2004) 8 SCC 505

order of reference, the decision in *State of Maharashtra* v. *Sant Joginder Singh Kishan Singh*[3] 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.

71. 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 Entries 5, 6, 10, 13, 14, 17, 18, 23, 24, 28, 33, 35 of List II and also by Entries 17-A, 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.

72. 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.

73. 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 within one year failing which the land should be deemed to be released.

74. 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

3 1995 Supp (2) SCC 475 : (1995) 2 SCR 242

the proceedings on the ground that Section 11-A 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 petition by the impugned judgment. It held, on a perusal of the documents, that it was satisfied that the requisite steps had 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 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.

75. In the second of the appeals, the land involved is situate on 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 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 by 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 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.

76. 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 sq m of land. On 24-9-1984, 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 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.

77. On 3-2-1998, the appellant issued a purchase notice, inter alia, asking for renotifying 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.

78. 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.

79. 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 renotify the land and pay the market value as compensation.

80. 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.

81. 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* v. *Sant Joginder Singh Kishan Singh*[3]. The appellant thereupon approached this Court and got its petition for special leave to appeal tagged to Civil Appeal No. 3703 of 2003.

82. 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, 1894 would automatically be attracted in any proceedings for acquisition under the MRTP Act. Since Section 11-A 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 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.

3 1995 Supp (2) SCC 475 : (1995) 2 SCR 242

83. The further submission is that taking of some step like writing to the Government for 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 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 11-A of the Land Acquisition Act had no application.

84. It is also contended that in any event the amendment brought in by introduction of Section 11-A 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 11-A was not in the statute book and hence there was no question of the acquisition lapsing in terms of Section 11-A of the Land Acquisition Act. It is submitted that the decision of this Court in *State of Maharashtra* v. *Sant Joginder Singh Kishan Singh*[3] 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 authority concerned to the Government to acquire the land for the purpose for which it has been reserved 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 Corpn. of Greater Bombay* v. *Dr. Hakimwadi Tenants' Assn.*[4] to negative the plea.

85. 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.

86. 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

3 1995 Supp (2) SCC 475 : (1995) 2 SCR 242
4 1988 Supp SCC 55

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.

87. 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 draft regional plan, development plan or any other plan or the scheme.

88. 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 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 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 adjudged with reference to the market value on the date of the second declaration.

89. 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 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. *Lapsing of reservations.*—If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final regional plan, or final development plan comes into force or if proceedings for the acquisition of such land under this Act or under the Land Acquisition Act, 1894, are not commenced within such period, the owner or any person interested in the land may serve notice on the planning authority, development authority or as the case may be, appropriate authority to that effect; and if within six months from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon the land shall be deemed to be released from such reservation, allotment or designation and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan."

90. 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 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 the land in question under the relevant plan. In other words, if the reservation lapses, the landowner could use the land for the purposes for which the adjacent lands are permitted to be used under the development plan or revised plan.

91. This section also does not appear to deal with lapsing of any 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 landowner is given the right to issue a 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.

92. Section 128 confers power on the State Government to acquire land for a purpose 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.

93. 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 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 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.

94. 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".

95. 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.

96. Section 11-A 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.

97. 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

in Section 11-A of the Land Acquisition Act 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.

98. It is clear that when the MRTP Act was enacted, the Land Acquisition Act that was referred to 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 11-A of the Land Acquisition Act.

99. 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.

100. 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 the invocation of the theory of incorporation by 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 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.

101. 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 *Secy. of State for India in Council* v. *Hindusthan Coop. Insurance Societies Ltd.*[24] 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 Co. Ltd.* v. *Collector, Rangoon*[25] 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.

102. 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: (*Hindusthan Coop. Insurance Societies Ltd. case*[24], IA pp. 266-67)

> "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, or 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

24 (1930-31) 58 IA 259 : AIR 1931 PC 149
25 (1911-12) 39 IA 197

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*, 3rd Edn., 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 offspring 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. Sepulchres*[26]:

> 'If the particular Act gives in itself a complete rule on the 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 Rly. Co.* v. *Wandsworth Board of Works*[27].)" (emphasis supplied)

103. 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 Municipal Commrs. of Howrah* v. *Shalimar Wood Products (P) Ltd.*[28], this Court quoted with approval the observations concerned. In *Ujagar Prints (II)* v. *Union of India*[29] this Court observed: (SCC pp. 528-29, para 93)

> "*93*. Referential legislation is of two types. One is where an earlier Act or some of its provisions are incorporated by reference into a later

26 (1863) 33 LJ Ch 372
27 (1873) LR 8 CP 185
28 AIR 1962 SC 1691 : (1963) 1 SCR 47
29 (1989) 3 SCC 488 : 1989 SCC (Tax) 469

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 *Secy. of State for India in Council* v. *Hindusthan Coop. Insurance Societies Ltd.*[24], *Bolani Ores Ltd.* v. *State of Orissa*[30], *Mahindra & Mahindra Ltd.* v. *Union of India*[31]. 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 *Bajaya* v. *Gopikabai*[32], 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*[33], *New Central Jute Mills Co. Ltd.* v. *Asstt. CCE*[34] and *Special Land Acquisition Officer, City Improvement Trust Board* v. *P. Govindan*[35]. Whether a particular statute falls into the first or second category is always a question of construction."

104. A three-Judge Bench of this Court in *U.P. Avas Evam Vikas Parishad* v. *Jainul Islam*[2] after referring to and quoting from the decision of the Privy Council in *Secy. of State for India in Council* v. *Hindusthan Coop. Insurance Societies Ltd.*[24] held that the provisions of Section 55 of the Adhiniyam concerned 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: (*U.P. Avas Evam Vikas Parishad case*[2], SCC p. 483, para 21)

"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

24 (1930-31) 58 IA 259 : AIR 1931 PC 149
30 (1974) 2 SCC 777
31 (1979) 2 SCC 529
32 (1978) 2 SCC 542
33 AIR 1962 SC 316 : (1962) 3 SCR 786
34 (1970) 2 SCC 820
35 (1976) 4 SCC 697
2 (1998) 2 SCC 467

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*[36] can be attracted."

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 Act 68 of 1984, expressly or by necessary intendment, applies the said amendments to the Adhiniyam.

105. In *Nagpur Improvement Trust* v. *Vasantrao*[1] 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 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.

106. But, both in *U.P. Avas Evam Vikas Parishad* v. *Jainul Islam*[2] and *Nagpur Improvement Trust* v. *Vasantrao*[1], 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 justified, is one aspect to be considered.

107. But then, the Court in *Nagpur Improvement Trust* v. *Vithal Rao*[37] 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 Court summarised the decision of the High Court thus: (SCC p. 502, para 5)

"5. 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 purposes of a scheme framed by the Trust and such being the position, it is not permissible without violating the guarantee under Article 14 of the

36 (1975) 2 SCC 377 : 1975 SCC (Cri) 589
1 (2002) 7 SCC 657
2 (1998) 2 SCC 467
37 (1973) 1 SCC 500

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 Paras 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 Acquisition Act are ultra vires as violating the guarantee of Article 14 of the Constitution."

This Court stated: (SCC p. 507, paras 29-30)

"*29.* ... 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 improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority 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.

30. 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.

108. The decision in *State of Kerala* v. *T.M. Peter*[38] 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(2-A) of the Town Planning Act and the appeal was against that decision. This Court stated: (SCC pp. 558-59, para 7)

"*7.* 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 dispatch 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

38 (1980) 3 SCC 554

timescale 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 difference of scale, the diverse consequences, the overall implications of developmental 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 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 date of notification and the actual acquisition). 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 not powerless to quash and grant relief where, arbitrary protraction or mala fide inaction of authorities injures an owner." (emphasis supplied)

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 to the landowners as provided under the Land Acquisition Act, even though the acquisition is under the Improvement Act.

109. In *State of Maharashtra* v. *Sant Joginder Singh Kishan Singh*[3] this Court was dealing with the MRTP Act and two learned Judges of this Court after referring to the distinction between legislation by incorporation and adoption by reference proceeded to hold that Section 11-A 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* v. *Sant Joginder Singh Kishan Singh*[3] that Section 11-A 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.

3 1995 Supp (2) SCC 475 : (1995) 2 SCR 242

110. Learned counsel for the appellants commended to us the reasons given in the order of reference for overturning the decision in *State of Maharashtra* v. *Sant Joginder Singh Kishan Singh*[3]. Of course, we could consider or reconsider the correctness of the decision in *State of Maharashtra* v. *Sant Joginder Singh Kishan Singh*[3] because that was rendered only by two learned Judges. But, we find from the various arguments raised that there are at least two three-Judge 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.

111. 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 *State of M.P.* v. *M.V. Narasimhan*[36] 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.

112. Under our Constitution, there is a distribution of legislative powers between 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, the 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 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

3 1995 Supp (2) SCC 475 : (1995) 2 SCR 242
36 (1975) 2 SCC 377 : 1975 SCC (Cri) 589

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. As stated in *Craies on Statute Law*, 7th Edn., p. 223,

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

113. 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 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 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 constitutional scheme of legislation.

114. The second of the questions, of course, relates to the interpretation of Section 127 of the MRTP Act. The question has to be considered in the light of the decision in *Municipal Corpn. of Greater Bombay* v. *Dr. Hakimwadi Tenants' Assn.*[4] 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.

115. 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

* **Ed.**: The portion in italics is emphasised in the original, and the portion underlined has been emphasised herein.

4 1988 Supp SCC 55

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.

116. 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.

117. 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 land concerned 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.

118. 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 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 the MRTP Act has done. The first part of the provision abovequoted is unambiguous and that is a case where the land is actually acquired. Or, in other words, the acquisition is complete. The second limb abovequoted shows that it is possible to avert the lapse of the scheme if steps as aforesaid are commenced for its acquisition.

119. 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.

120. 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 Corpn. of Greater Bombay* v. *Dr. Hakimwadi Tenants' Assn.*[4] 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.

121. 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 six 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 Chief Engineer as authorised by the local authority and to say that the letter written by him is unauthorised or is not adequate compliance with 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.

122. 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.

123. 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.

124. 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.

---

4 1988 Supp SCC 55